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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 110

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE, PETITIONER

vs.

MARY Q. HALLOCK AND CENTRAL UNITED NATIONAL
BANK OF CLEVELAND, TRUSTEES

No. 111

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE, PETITIONER

vs.

MARY Q. HALLOCK, EXECUTRIX, ESTATE OF HENRY
HALLOCK, DECEASED

No. 112

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE, PETITIONER

vs.

S. H. SQUIRE, SUPERINTENDENT OF BANKS OF THE
STATE OF OHIO, ETC.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT

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Before United States Board of Tax Appeals

Docket No. 76802

MARY Q. HALLOCK AND CENTRAL UNITED NATIONAL BANK OF
CLEVELAND, TRUSTEES, PETITIONERS

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances: For Taxpayer: Walker H. Nye, Esq. For Commissioner: Eugene G. Smith, Esq.

Docket entries

1934

- July 3—Petition received and filed. Taxpayer notified. (Fee paid.)
- July 5—Copy of petition served on General Counsel.
- Aug. 23—Answer filed by General Counsel.
- Aug. 29—Copy of answer served on taxpayer.
- Sept. 8—Motion for circuit hearing at Cleveland filed by taxpayer. 9/10/34 granted.

1935

- Oct. 14—Motion for leave to file amended answer in lieu of answer filed August 23, 1935, amendment lodged, filed by General Counsel. 10/16/35 granted.
- Oct. 21—Hearing set Dec. 9, 1935, at Cleveland, Ohio.
- Dec. 12—Hearing had before Mr. Mellott on merits. Submitted. Counsel's motion to consolidate for hearing and decision with dockets 67803 and 76927 granted. Reply to amended answer filed by petitioner. Copy served. Petitioner's brief due January 27, 1936, Commissioner's due Feb. 27, 1936, petitioner's reply 3/13/36.

2 1936

- Jan. 4—Transcript of hearing of Dec. 12, 1935, filed.
- Jan. 9—Brief filed by taxpayer.
- May 19—Opinion rendered, Mr. Mellott, Div. 11. Judgment will be entered for the petitioner.
- May 21—Decision entered, Div. 11.
- May 28—Motion to vacate decision and for reconsideration filed by General Counsel.
- June 5—Order to place on Calendar of 8/5/36 and further ordered that decision of 5/21/36 be vacated, entered.
- July 23—Brief on motion by respondent for reconsideration filed by taxpayer. 7/25/36 copy served.
- Aug. 5—Hearing had before Mr. Mellott, Div. 11, on Commissioner's motion for reconsideration—denied. Decision to be entered by Mr. Mellott.
- Aug. 10—Motion for reconsideration denied and order of deficiency entered.
- Aug. 24—Transcript of hearing of August 5, 1936, filed.
- Oct. 28—Petition for review by U. S. Circuit Court of Appeals (6) with assignments of error filed by General Counsel.

1936

- Nov. 4—Proof of service filed by General Counsel (3).
- Dec. 11—Motion for extension to Jan. 27, 1937, to prepare and transmit record filed by General Counsel.
- Dec. 11—Order enlarging time to Jan. 27, 1937, to prepare and transmit record entered.

1937

- Jan. 15—Motion for extension to Feb. 27, 1937, to complete and transmit record filed by General Counsel.
- Jan. 15—Order enlarging time to Feb. 27, 1937, to prepare evidence and transmit and deliver record sur petition for review entered.
- Feb. 18—Motion for extension to March 15, 1937, to complete and transmit record filed by General Counsel.
- Feb. 18—Order enlarging time to March 15, 1937, to prepare and deliver record entered.
- Feb. 26—Praecipe with proof of service thereon filed by General Counsel.
- Mar. 6—Certified copy of stipulation re consolidation and printing of record filed.

3 Before United States Board of Tax Appeals

Docket No. 76803

MARY Q. HALLOCK, EXECUTRIX OF ESTATE OF HENRY HALLOCK,
DECEASED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances: For Taxpayer: Walker H. Nye, Esq. For Commis-
sioner: Eugene G. Smith, Esq.

Docket entries

1934

- July 3—Petition received and filed. Taxpayer notified. (Fee paid.)
- July 5—Copy of petition served on General Counsel.
- Aug. 23—Answer filed by General Counsel.
- Aug. 29—Copy of answer served on taxpayer.
- Sept. 8—Motion for circuit hearing at Cleveland filed by taxpayer. 9/10/34 granted.

1935

- Oct. 21—Hearing set Dec. 9, 1935, at Cleveland, Ohio.
- Dec. 12—Hearing had before Mr. Mellott, Div. 11 on merits. Submitted. Motion to consolidate with dockets 76802 and 76927 granted. Petitioner's brief due 1/27/36—respondent's 2/27/36—petitioner's reply 3/13/36.

1936

- Jan. 4—Transcript of hearing of Dec. 12, 1935, filed.
- Jan. 9—Brief filed by taxpayer.
- May 19—Opinion rendered, Mr. Mellott, Div. 11. Judgment will be entered for petitioner.

1936

- May 21—Decision entered, Div. 11.
 May 28—Motion to vacate decision and for reconsideration filed by General Counsel.
 June 5—Order to vacate decision and to place proceeding on calendar of August 5, 1936, entered.
 July 23—Brief on motion by respondent for reconsideration filed by taxpayer. 7/25/36 copy served.
 Aug. 5—Hearing had before Mr. Mellott, Div. 11. Commissioner's motion denied. Decision to be entered.
 Aug. 10—Motion for reconsideration denied and order of deficiency entered.
 Aug. 24—Transcript of hearing of August 5, 1936, filed.
 Oct. 28—Petition for review by U. S. Circuit Court of Appeals (6) with assignments of error filed by General Counsel.
 Nov. 4—Proof of service filed by General Counsel. (2)
 Dec. 11—Motion for extension to Jan. 27, 1937, to prepare and transmit record filed by General Counsel.
 Dec. 11—Order enlarging time to Jan. 27, 1937, to prepare and transmit record entered.

1937

- Jan. 15—Motion for extension to Feb. 27, 1937, to complete and transmit record filed by General Counsel.
 Jan. 15—Order enlarging time to Feb. 27, 1937, to prepare and transmit record entered.
 Feb. 18—Motion for extension to March 15, 1937, to complete and transmit record filed by General Counsel.
 Feb. 18—Order enlarging time to March 15, 1937, to prepare and deliver record entered.
 Feb. 26—Praecipe with proof of service thereon filed by General Counsel.
 Mar. 6—Certified copy of stipulation re consolidation and printing record filed.

Before United States Board of Tax Appeals

Docket No. 76927

I. J. FULTON, SUPERINTENDENT OF BANKS OF THE STATE OF OHIO, IN CHARGE OF THE LIQUIDATION OF THE UNION TRUST COMPANY, SUCCESSOR OF THE FIRST TRUST AND SAVINGS CO., TRUSTEE, CLEVELAND, OHIO, AMENDED BY ORDER OF DECEMBER 9, 1935, TO READ—S. H. SQUIRE, SUPERINTENDENT OF BANKS OF THE STATE OF OHIO, IN CHARGE OF THE LIQUIDATION OF THE UNION TRUST CO., SUCCESSOR OF THE FIRST TRUST AND SAVINGS CO., TRUSTEE, CLEVELAND, OHIO, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances: For Taxpayer: C. V. Cannon, Esq., Deceased; W. H. Annat, Esq. For Commissioner: Eugene G. Smith, Esq.

Docket entries

1934

- July 14—Petition received and filed. Taxpayer notified. (Fee paid.)
- July 14—Copy of petition served on General Counsel.
- Aug. 23—Answer filed by General Counsel.
- Aug. 30—Copy of answer served on taxpayer.
- Sept. 12—Motion for circuit hearing at Cleveland filed by taxpayer. 9/13/34 granted.

1935

- Oct. 14—Motion for leave to file amended answer in lieu of answer filed August 23, 1935, amendment lodged filed by General Counsel. 10/16/35 granted.
- Oct. 21—Hearing set Dec. 9, 1935, at Cleveland, Ohio.
- Dec. 2—Notice of appearance of W. H. Annat as counsel for taxpayer filed.
- 6 Dec. 7—Motion to substitute S. H. Squire, Supt. of Banks of the State of Ohio, in place of I. J. Fulton as petitioner, filed by taxpayer. 12/9/35 granted.
- Dec. 12—Hearing had before Mr. Mellott, Div. 11, on merits. Submitted. Motion to consolidate with dockets 76802 and 3 granted. Motion to file reply to amended answer and reply filed by petitioner. Copies served on respondent. Motion to substitute the parties granted. Petitioner's brief due 1/27/36—respondent's due 2/27/36—petitioner's reply due 3/13/36.

1936

- Jan. 4—Transcript of hearing of 12/12/35 filed.
- Jan. 27—Brief filed by taxpayer. 1/27/36 copy served.
- May 19—Opinion rendered, Mr. Mellott, Div. 11. Judgment will be entered for the petitioner.
- May 21—Decision entered, Mr. Mellott, Div. 11.
- May 28—Motion to vacate decision and reconsideration filed by General Counsel.
- June 5—Order to vacate decision and to place on calendar of 8/5/36 entered.
- July 23—Brief on motion by respondent for reconsideration filed by taxpayer.
- Aug. 5—Hearing had before Mr. Mellott, Div. 11, on Commissioner's motion. Denied. Decision to be entered.
- Aug. 10—Motion for reconsideration denied and order of deficiency entered.
- Aug. 24—Transcript of hearing August 5, 1936, filed.
- Oct. 28—Petition for review by U. S. Circuit Court of Appeals (6) with assignments of error filed by General Counsel.
- Nov. 4—Proof of service filed by General Counsel. (2.)
- Dec. 11—Motion for extension to Jan. 27, 1937, to prepare and transmit record filed by General Counsel.
- Dec. 11—Order enlarging time to Jan. 27, 1937, to prepare and deliver record entered.

1937

- Jan. 15—Motion for extension to Feb. 27, 1937, to complete and transmit record filed by General Counsel.

- 1937
- 7 Jan. 15—Order that time for preparation of evidence and delivery of record sur petition for review be extended to Feb. 27, 1937 entered.
- Feb. 18—Motion for extension to March 15, 1937 to complete and transmit record filed by General Counsel.
- Feb. 18—Order enlarging time to March 15, 1937 to prepare and deliver record entered.
- Feb. 26—Praecipe with proof of service thereon filed by General Counsel.
- Mar. 6—Certified copy of stipulation re consolidation and printing of record filed.

Before United States Board of Tax Appeals

Petition—No. 76802

(Filed July 3, 1934)

The above named petitioners hereby petition for a redetermination of the deficiency and proposed transferee assessment against them set forth by the Commissioner of Internal Revenue in his notice of deficiency and assessment (MT-ET-CI-3175), dated May 22, 1934 and as a basis of their proceeding allege as follows:

1. The petitioners are trustees under a certain insurance trust agreement executed by Henry Hallock under date of September 1, 1925. The residence of Mary Q. Hallock is 12349 Cedar Road, Cleveland Heights, Ohio, and the principal place of business of Central United National Bank of Cleveland is 308 Euclid Avenue, Cleveland, Ohio.

2. The notice of deficiency and assessment (a copy of which is attached and marked Exhibit "A") was mailed to the petitioners on May 22, 1934.

3. The taxes in controversy are estate taxes under the Revenue Act of 1926 and the Revenue Act of 1932 upon the Estate of Henry Hallock, who died October 10, 1932, and for \$6,096.97.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The inclusion as part of the gross estate of the decedent of the trust fund created by trust agreement between Henry Hallock and The First Trust and Savings Company of Cleveland, Ohio (now The Union Trust Company), dated September 3, 1919, of the alleged value of \$70,720, as a transfer to take effect in possession or enjoyment at or after death.

(b) The valuation of the trust estate created by said agreement of September 3, 1919, which trust estate consists of 884 shares of preferred stock of The Ohio Rubber Company, of Willoughby, Ohio, at \$70,720.

(c) The inclusion in the gross estate of said trust property at the full valuation thereof, without deduction of the value of the existing

life estate or interest in said trust of Anne Lamson Hallock, the life beneficiary of all of the income thereof.

(d) The disallowance as deductions from the gross estate of debts and charges against the estate of \$56,555.81, on the alleged ground that no greater amount may be allowed as such deductions than the value of the probated estate which is being administered by Mary Q. Hallock as executrix.

(e) The assessment against the petitioners, as trustees, beneficiaries and transferees, of the entire alleged deficiency of \$6,096.97.

5. The facts upon which the petitioners rely as the basis of this proceeding are as follows:

(a) On September 3, 1919, Henry Hallock and his then wife, Anne Lamson Hallock, in contemplation of a divorce suit about to be instituted by the wife, made a separation and alimony agreement. At the same time, and pursuant to one of the requirements of said agreement, Henry Hallock made a trust agreement with The First Trust and Savings Company of Cleveland, Ohio, as Trustee. The main purpose of the trust agreement was to produce the sum of \$500 per month, which the separation agreement provided was to be paid to Anne Lamson Hallock, and eventually there was deposited with the trustee 884 shares of 7% preferred stock of The Ohio Rubber Company, it being contemplated that if all dividends were paid on the preferred stock, the gross income of the trust estate would be \$6,188 per annum, which would pay the necessary \$6,000 per year to Anne Lamson Hallock and leave an additional \$188 per year as the estimated amount necessary to pay the trustee's expenses and compensation.

The trust agreement was subject to revocation or modification only with the written assent of both Henry Hallock and Anne Lamson Hallock. By its terms the net income of the trust estate, up to \$6,000 per year, is payable to Anne Lamson Hallock for life. The trust agreement contains the following provision as to the disposition of the trust estate upon the death of the life beneficiary:

"C. If and when Anne Lamson Hallock shall die and in such event and thereupon the within trust shall terminate and said Trustee shall and will pay Party of the First Part if he then be living any accrued income, then remaining in said trust fund and shall and will deliver forthwith to Party of the First Part, the principal of the said trust fund. If and in the event said Party of the First Part shall not be living then and in such event payment and delivery over shall be made to Levitt Hallock and Helen Hallock, respectively son and daughter of the Party of the First Part, share and share alike. If and in the event either said Levitt Hallock or Helen Hallock shall at such time be dead, the share which would have gone to him or her if living, shall go to the children of such deceased child and if there be no such children living, then said entire income and principal shall be paid to that child of Henry Hallock then living."

o Anne Lamson Hallock obtained a divorce from Henry Hallock on October 28, 1919, is still living and has not remarried. The divorce decree itself made no provision for her by way of alimony or support.

Under the terms of the trust agreement the transfer was entirely completed at the time of the execution thereof, no change in possession or enjoyment took place at the death of the decedent and the transfer of no part of the trust estate took effect in possession or enjoyment at or after the death of the decedent, within the meaning of Section 302 (c) of the Revenue Act of 1926 or any amendments thereof.

10 (b) The trust agreement of September 3, 1919, and the transfer made thereunder, were supported by adequate and full consideration in money and moneys worth, since they were part of the aforesaid separation agreement, by the terms of which Anne Lamson Hallock released all rights of alimony, dower, inheritance and other rights based on the marital relation between the parties. The trust and separation agreements were made prior to the amendment of Section 303 (d) of the Revenue Act of 1926 by Section 804 of the Revenue Act of 1932.

(c) The 884 shares of 7% preferred stock of the Ohio Rubber Company, of the par value of \$100.00 each, which comprise all of said trust estate, are valued by the respondent at \$70,720, or \$80.00 per share. This valuation is greatly in excess of the actual and fair market value of the stock at the date of decedent's death.

(d) Anne Lamson Hallock, having survived Henry Hallock, her life interest in said trust estate was in existence before and after the decedent's death and still continues. Even if the respondent's determination is partly correct and if any interest in the trust is deemed to have been transferred to take effect in possession or enjoyment at or after the decedent's death, in determining the value of this interest, the value of the life estate or interest of Anne Lamson Hallock should be deducted from the value of the entire trust estate. She was 63 years of age at the date of decedent's death.

(e) Excluding the specific exemptions, the petitioners' return sets up deductions of \$171,378.17. Exclusive of the trust estate held under said trust agreement of September 3, 1919, and of a life insurance trust, on account of which \$91,468.57 is included in the gross taxable estate and about which there is no controversy, the gross estate amounts to \$114,822.36. The respondent had disallowed the deductions in excess of \$114,822.36, amounting to 11 \$56,555.81, on the ground that no greater sum may be allowed than the probated estate, although the gross taxable estate, both as returned by the petitioners and as determined by the respondent, exceeds the total claimed deductions of \$171,378.17.

(f) The value of the life insurance proceeds held by petitioners under the trust agreement of September 1, 1925, is determined at \$91,468.57, after the deduction of the insurance exemption of \$40,000.

The entire gross estate is determined to be \$277,010.93. In no event should the petitioners or said insurance trust estate be liable for a greater part of any deficiency than is produced by the inclusion of said \$91,468.57 as part of the gross estate.

Wherefore, the petitioners pray that this Board may hear the proceeding and determine that there is no deficiency in Federal Estate Tax liability of the Estate of Henry Hallock, deceased, and that no assessment may be made against them as Trustees or Transferees, or otherwise.

WALKER H. NYE,
Counsel for Petitioners,
2800 Terminal Tower, Cleveland, Ohio.

[Duly sworn to by Mary Q. Hallock and E. A. Hanson; jurat omitted in printing.]

12

Exhibit A to petition

TREASURY DEPARTMENT,
Washington, May 22, 1934.

MT-ET-C1-3175-18th Ohio.
Estate of Henry Hallock.
Date of Death—October 10, 1932.

MARY Q. HALLOCK AND CENTRAL NATIONAL BANK OF CLEVELAND,
Trustees, Beneficiaries, and Transferees, Estate of Henry Hallock,
Cleveland, Ohio.

MADAM AND SIRS: Pursuant to Sections 315 (b) and 316 of the Revenue Act of 1926, there is proposed for assessment against you the sum of \$6,096.97, plus interest thereon, constituting your liability as transferees and life insurance beneficiaries, by virtue of a trust instrument executed by the decedent on or about September 1, 1925, under which he assigned and delivered to you, as trustees and beneficiaries, certain policies of insurance on his life. This sum represents the Federal estate tax due upon the transfer of the net estate of the decedent, Henry Hallock, who died October 10, 1932, a resident of Shaker Heights, Ohio. The sum of \$6,096.97 represents a deficiency which results from changes in the items disclosed in the return filed for this estate as follows:

GROSS ESTATE

	Returned	Determined
Mortgages, notes, cash, and insurance:		
Item 3	\$70,025.00	\$91,468.57
Transfers		
By trust instrument executed on September 3, 1919	0.00	70,720.00

The Bureau finds that this transfer comes within the purview of Sections 302 (c) and 302 (d) of the Revenue Act of 1926.

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DEDUCTIONS

	Returned	Determined
Funeral expenses.....	\$1,056.00	\$114,822.36
Executrix' commissions.....	1,229.00	
Attorney's fees.....	3,000.00	
Miscellaneous administration expenses.....	350.00	
Debts of decedent.....	2,677.12	
Unpaid mortgages.....	154,666.05	
Support of dependents.....	8,400.00	

The deductions are adjusted to the determined amount since no greater sum may be allowed than the value of the probated estate which is subject to the payment of these deductions. The computation of the amount determined is as follows:

Gross Estate.....		\$277,010.93
Transfers.....	\$70,720.00	
Insurance payable to beneficiaries other than the estate		
less \$40,000.00.....	91,468.57	162,188.57
		\$114,822.36

SUMMARY

Gross estate.....	\$184,847.36	\$277,010.93
Deductions (1926 Act).....	271,378.17	214,822.36
Net estate (1926 Act).....	\$0.00	\$62,188.57
Gross Estate.....	\$184,847.36	\$277,010.93
Deductions (1926 Act).....	221,378.17	164,822.36
Net Estate (1932 Act).....	\$0.00	\$112,188.57
Gross tax (1926 Act).....	\$0.00	\$743.77
Total gross taxes (1926 and 1932 Acts).....	\$0.00	\$6,006.97
Credit for State estate, inheritance, legacy, or succession taxes.....	0.00	0.00
Net tax.....	\$0.00	\$6,006.97
Deficiency.....		\$6,006.97

14 In accordance with the provisions of Title III of the Revenue Act of 1926, you are allowed sixty days from the date of the mailing of this letter (not counting Sunday as the sixtieth day) within which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Washington, D. C., and must be mailed in time to reach the Board within the sixty-day period prescribed.

Where a transferee or beneficiary has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the sixty days prescribed, and an assessment has been made, or where a transferee or beneficiary has filed a petition and an assessment in accordance with the decision, which has become final, has been made, the unpaid amount of such assessment must be paid upon notice and demand from the Collector of Internal Revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute the enclosed Form 890 (1) waiving the restrictions on the assessment and collection of such deficiency and (2) ~~consenting to the assessment and collection thereof~~, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of the Estate Tax Division, Miscellaneous Tax Unit. In the event that you acquiesce is only a part of the determination, the enclosed form of waiver should be executed with respect to the amount of the deficiency to which you agree.

Respectfully,

GUY T. HELVERING,
Commissioner.

By (Signed) D. S. BLISS,
Deputy Commissioner.

Enclosure:

Waiver—Form 890.

15.

Before United States Board of Tax Appeals

Answer—No. 76802

(Filed August 23, 1934)

The Commissioner of Internal Revenue, by his attorney, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, for answer to the petition filed by the above-named petitioners, admits and denies as follows:

1. Admits the allegations contained in the paragraph of the petition numbered 1.

2. Admits the allegations contained in the paragraph of the petition numbered 2.

3. Admits the allegations contained in the paragraph of the petition numbered 3.

4. Denies that the determination of the deficiency is based upon errors as alleged in the paragraph of the petition numbered 4.

5. (a) Admits so much of the subparagraph (a) of the paragraph of the petition numbered 5, as alleges that on September 3, 1919, Henry Hallock, the decedent herein, made a transfer by way of a trust agreement with the First Trust and Savings Company of Cleveland, Ohio, as Trustee, but denies every other allegation contained in subparagraph (a) of the paragraph of the petition numbered 5.

(b) Denies the allegations contained in subparagraph (b) of the paragraph of the petition numbered 5.

(c) Admits so much of subparagraph (c) of the paragraph of the petition numbered 5 as alleges that 884 shares of 7% preferred stock of The Ohio Rubber Company, of the par value of \$100.00 each, which comprise the said trust estate, was valued by the respondent at \$80.00 per share, or a total of \$70,720.00, but denies all other

allegations contained in said paragraph (c) of the paragraph of the petition numbered 5.

(d) Denies the allegations contained in subparagraph (d) of the paragraph of the petition numbered 5.

(e) Admits the allegations contained in subparagraph (e) of the paragraph of the petition numbered 5.

(f) Admits so much of subparagraph (f) of the paragraph of the petition numbered 5 as alleges that the respondent has determined the value of the life insurance held by the trust agreement made in

September 1, 1925, to be \$91,468.57, after allowing the specific exemption of \$40,000; that the respondent has determined the entire gross estate to be \$277,010.93, but denies every other allegation contained in said subparagraph (f) of the paragraph of the petition numbered 5.

6. Denies generally and specifically each and every allegation of the petition not hereinbefore admitted, qualified, or ~~denied~~.

Wherefore, it is prayed that the appeal be denied.

(Signed) ROBERT H. JACKSON,
*Assistant General Counsel
for the Bureau of Internal Revenue.*

Of Counsel:

EUGENE G. SMITH,
*Special Attorney,
Bureau of Internal Revenue.*

Before United States Board of Tax Appeals

Amended answer—No. 76802

(Filed October 16, 1935)

The Commissioner of Internal Revenue, by his attorney, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, for amended answer to the petition filed by the above-named petitioners, admits, denies, and avers as follows:

1. Admits the allegations contained in the paragraph of the petition numbered 1.

2. Admits the allegations contained in the paragraph of the petition numbered 2.

3. Admits the allegations contained in the paragraph of the petition numbered 3.

17 4. Denies that the determination of the deficiency is based upon errors as alleged in the paragraph of the petition numbered 4.

5 (a) Admits so much of subparagraph (a) of the paragraph of the petition numbered 5 as alleges that on September 3, 1919, Henry Hallock, the decedent herein, created a revocable trust naming the First Trust and Savings Company of Cleveland, Ohio, as trustee, but denies every other allegation contained in subparagraph (a) of the paragraph of the petition numbered 5.

(b) Denies the allegations contained in subparagraph (b) of the paragraph of the petition numbered 5.

(c) Admits so much of subparagraph (c) of the paragraph of the petition numbered 5 as alleges that 884 shares of 7% preferred stock of "The Ohio Rubber Company, of the par value of \$100.00 each, which comprise the said trust estate, was valued by the respondent at \$80.00 per share, or a total of \$70,720.00, but denies all other allegations contained in said paragraph (c) of the paragraph of the petition numbered 5.

(d) Denies the allegations contained in subparagraph (d) of the petition numbered 5.

(e) Admits the allegations contained in subparagraph (e) of the paragraph of the petition numbered 5.

(f) Admits so much of subparagraph (f) of the paragraph of the petition numbered 5 as alleges that the respondent has determined the value of the life insurance held by the trust agreement made in September 1, 1925, to be \$91,468.57, after allowing the specific exemption of \$40,000; that the respondent has determined the entire gross estate to be \$277,010.93, but denies every other allegation contained in said subparagraph (f) of the paragraph of the petition numbered 5.

6. The facts relied upon by the respondent to show the petitioner's liability as transferees are as follows:

(a) That at the time of the decedent's death his estate was and is now insolvent.

(b) On or about September 1, 1925, the decedent transferred to the petitioners as trustees under a deed of trust dated September 1, 1925, insurance policies taken out on his own life having an aggregate face value of approximately \$200,000.00.

18 (c) Upon the decedent's death the proceeds of the said policies were paid to the petitioners as trustees aforesaid, and said proceeds or investments of said proceeds are now in the hands of said trustees, in an amount in excess of the deficiency determined by the Commissioner in the deficiency notice dated May 22, 1934.

(d) That the said insurance passed under contracts executed by the decedent in favor of specific beneficiaries, the petitioners herein, and the petitioners are transferees and beneficiaries within the purview of Section 315 (b) and Section 316 of the Revenue Act of 1926, and are liable in this proceeding as such.

7. Denies generally and specifically each and every allegation of the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the respondent's determination in this proceeding be approved.

(Signed) ROBERT H. JACKSON,
Assistant General Counsel
for the Bureau of Internal Revenue.

Of Counsel:

EUGENE G. SMITH,
Special Attorney,
Bureau of Internal Revenue.

Before United States Board of Tax Appeals

Reply—No. 76802

(Filed December 12, 1935)

The petitioners, Mary Q. Hallock and Central National Bank of Cleveland, Trustees, by their Attorney, Walker H. Nye, for reply to the amended answer filed by the above-named respondent admit, deny, and aver as follows:

19 6 (a) Admit the allegations contained in subparagraph (a) of the paragraph of the amended answer numbered 6.

6 (b) Admit the allegations contained in subparagraph (b) of the paragraph of the amended answer numbered 6.

6 (c) Admit the allegations in subparagraph (c) of the paragraph of the amended answer numbered 6.

6 (d) Admit so much of subparagraph (d) of the paragraph of the amended answer numbered 6 as states that said insurance passed under contracts executed by the decedent in favor of specific beneficiaries, the petitioners herein, but deny that the petitioners or transferees and beneficiaries within the purview of Section 315 (b) and Section 316 of the Revenue Act of 1926 and that they are liable in this proceeding as such.

Wherefore, petitioners pray this Board find there is no deficiency in Federal Estate Tax liability of the Estate of Henry Hallock, deceased, and that no assessment be made against the petitioners, as trustees or transferees, or otherwise.

(Signed) WALKER H. NYE,
2800 Terminal Tower, Cleveland, Ohio,
Counsel for Petitioners.

20 Before United States Board of Tax Appeals

Petition—No. 76803

(Filed July 3, 1934)

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (MT-ET-C1-3175), dated May 22, 1934, and as a basis of her proceeding alleges as follows:

1. The petitioner is the duly appointed, qualified, and acting executrix of the estate of Henry Hallock, who died October 10, 1932, under his last will and testament, which was duly admitted to probate and record by the Probate Court of Cuyahoga County, Ohio, on October 28, 1932. The residence of petitioner is 12349 Cedar Road, Cleveland Heights, Ohio.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on May 22, 1934.

3. The taxes in controversy are estate taxes under the Revenue Act of 1926 and the Revenue Act of 1932 upon the Estate of Henry Hallock, deceased, and for \$6,096.97.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The inclusion as part of the gross estate of the decedent of the trust fund created by trust agreement between Henry Hallock and The First Trust and Savings Company of Cleveland, Ohio (now The Union Trust Company), dated September 3, 1919, of the alleged value of \$70,720, as a transfer to take effect in possession or enjoyment at or after death.

(b) The valuation of the trust estate created by said agreement of September 3, 1919, which trust estate consists of 884 shares of preferred stock of The Ohio Rubber Company, of Willoughby, Ohio, at \$70,720.

(c) The inclusion in the gross estate of said trust property at the full valuation thereof, without deduction of the value of the existing life estate or interest in said trust of Anne Lamson Hallock, the life beneficiary of all of the income thereof.

(d) The disallowance as deductions from the gross estate of debts and charges against the estate of \$56,555.81, on the alleged ground that no greater amount may be allowed as such deductions 21 a than the value of the probated estate which is being administered by the petitioner as executrix.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) On September 3, 1919, Henry Hallock and his then wife, Anne Lamson Hallock, in contemplation of a divorce suit about to be instituted by the wife, made a separation and alimony agreement. At the same time, and pursuant to one of the requirements of said agreement, Henry Hallock made a trust agreement with The First Trust and Savings Company of Cleveland, Ohio, as Trustee. The main purpose of the trust agreement was to produce the sum of \$500 per month, which the separation agreement provided was to be paid to Anne Lamson Hallock, and eventually there was deposited with the trustee 884 shares of 7% preferred stock of The Ohio Rubber Company, it being contemplated that if all dividends were paid on the preferred stock, the gross income of the trust estate would be \$6,188 per annum, which would pay the necessary \$6,000 per year to Anne Lamson Hallock and leave an additional \$188 per year as the estimated amount necessary to pay the trustee's expenses and compensation.

The trust agreement was subject to revocation or modification only with the written assent of both Henry Hallock and Anne Lamson Hallock. By its terms the net income of the trust estate, up to \$6,000 per year, is payable to Anne Lamson Hallock for life. The trust agreement contains the following provision as to the disposition of the trust estate upon the death of the life beneficiary:

"C. If and when Anne Lamson Hallock shall die then and in such event and thereupon the within trust shall terminate and said Trustee shall and will pay Party of the First Part if he then be living any accrued income, then remaining in said trust fund and shall and will deliver forthwith to Party of the First Part, the principal of the said trust fund. If and in the event said Party of the First Part shall not be living then and in such event payment and delivery over shall be made to Levitt Hallock and Helen Hallock, respectively son and daughter of the Party of the First Part, share and share alike. If and in the event either said Levitt Hallock or Helen Hallock shall at such time be dead, the share which would have gone to him or her if living, shall go to the children of such deceased child and if there be no such children living, then said entire income and principal shall be paid to that child of Henry Hallock then living."

Anne Lamson Hallock obtained a divorce from Henry Hallock on October 28, 1919, is still living and has not remarried. The divorce decree itself made no provision for her by way of alimony or support.

Under the terms of the trust agreement the transfer was entirely completed at the time of the execution thereof, no change in possession or enjoyment took place at the death of the decedent and the transfer of no part of the trust estate took effect in possession or enjoyment at or after the death of the decedent, within the meaning of Section 302 (c) of the Revenue Act of 1926 or any amendments thereof.

(b) The trust agreement of September 3, 1919, and the transfer made thereunder, were supported by adequate and full consideration in money or moneys worth, since they were part of the aforesaid separation agreement, by the terms of which Anne Lamson Hallock released all rights of alimony, dower, inheritance, and other rights based on the marital relation between the parties. The trust and separation agreements were made prior to the amendment of Section 303 (d) of the Revenue Act of 1926 by Section 804 of the Revenue Act of 1932.

(c) The 884 shares of 7% preferred stock of the Ohio Rubber Company, of the par value of \$100.00 each, which comprise all of said trust estate, are valued by the respondent at \$70,720, or \$80.00 per share. This valuation is greatly in excess of the actual and fair-market value of the stock at the date of decedent's death.

(d) Anne Lamson Hallock, having survived Henry Hallock, her life interest in said trust estate was in existence before and after the decedent's death and still continues. Even if the respondent's determination is partly correct and if any interest in the trust is deemed to have been transferred to take effect in possession or enjoyment at or after the decedent's death, in determining the value of this interest, the value of the life estate or interest of Anne Lamson Hallock should be deducted from the value of

the entire trust estate. She was 63 years of age at the date of decedent's death.

(e) Excluding the specific exemptions, the petitioner's return sets up deductions of \$171,378.17. Exclusive of the trust estate held under said trust agreement of September 3, 1919, and of a life insurance trust, on account of which \$91,468.57 is included in the gross taxable estate and about which there is no controversy, the gross estate amounts to \$114,822.36. The respondent had disallowed the deductions in excess of \$114,822.36, amounting to \$56,555.81, on the ground that no greater sum may be allowed than the probated estate, although the gross taxable estate, both as returned by the petitioner and as determined by the respondent, exceeds the total claimed deductions of \$171,378.17.

Wherefore the petitioner prays that this Board may hear the proceeding and determine that there is no deficiency in Federal Estate tax liability of the Estate of Henry Hallock, deceased, due from the petitioner.

WALKER H. NYE,

Counsel for Petitioner,

2800 Terminal Tower, Cleveland, Ohio.

[Duty sworn to by Mary Q. Hallock; jurat omitted in printing.]

24

Exhibit A to petition

MT-ET-C1-3175-18th Ohio.

Estate of Henry Hallock.

Date of Death—October 10, 1932.

MARY Q. HALLOCK,

Executrix, 12349 Cedar Road, Cleveland Heights, Ohio.

MADAM: A deficiency of \$6,096.97 in the Federal Estate tax liability of the above-named estate has been determined after a review of the file in the case and a consideration of the protest against a deficiency proposed in a previous letter from this office. The determination of the deficiency and the action of this office on the protest are fully explained in the attached statement.

This notice of deficiency is given in accordance with the provisions of Section 308 (a) of the Revenue Act of 1926, and a petition for a redetermination of the deficiency may be filed with the United States Board of Tax Appeals within 60 days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter. If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute and forward the enclosed Form 890, waiving the restrictions against the immediate assessment and collection of the deficiency.

The submission of the waiver will expedite the closing of this case and will also benefit the estate by preventing the accumulation of

interest charges, as the interest period terminates 30 days after the filing of the waiver or on the date of assessment, whichever is earlier. The signing of the waiver does not prejudice your right to file a claim for refund of all or any portion of the tax. If you desire to consent to the assessment and collection of only a part of the deficiency, the enclosed form of waiver should be executed in such partial amount.

If within the 60-day period a petition has not been filed with the United States Board of Tax Appeals or the waiver, Form 890, has not been submitted, the deficiency will be thereafter assessed.

Respectfully,

GUY T. HELVERING,
Commissioner.

By: (Signed) D. S. BLISS,
Deputy Commissioner.

Enclosures:

Statement,

Waiver, Form 890.

The protest relates to the following items:

GROSS ESTATE

Transfers	Returned	Tentatively determined	Determined
By trust instrument dated September 3, 1919.....	\$0.00	\$70,720.00	\$70,720.00

After a careful consideration of the estate's contentions and in view of all factors of record bearing upon the value of the property transferred, the Bureau finds that the transfer in question comes within the purview of Sections 302 (c) and 302 (d) of the Revenue Act of 1926, and that no change is warranted in the value of the trust property on the date of decedent's death, as tentatively determined.

In the tentative audit deductions were allowed on account of debts and charges against the estate, including an allowance for support of dependents, in the full amount thereof, although they exceeded the value of the estate which was subject to their payment. Since no greater amount may be allowed than the value of the probated estate which is subject to the payment of such items, the following adjustment is made:

26

DEDUCTIONS

	Returned	Tentatively determined	Determined
Total not including specific exemption.....	\$171,378.17	\$171,378.17	\$114,822.36

The computation of the amount determined is as follows:

	Returned	Tentatively determined	Determined
Gross Estate			\$277,010.93
Transfers		\$70,720.00	
Insurance payable to beneficiaries other than the estate less \$40,000.00		91,468.57	162,188.57
			\$114,822.36

In view of the foregoing, the following computation shows the estate tax liability of this estate which is hereby made final:

	Returned	Tentatively determined	Determined
Gross Estate	\$184,847.36	\$277,010.93	\$277,010.93
Deductions (1926 Act)	271,378.17	271,378.17	214,822.36
Net estate (1926 Act)	\$0.00	\$5,632.76	\$62,188.57
Gross estate	\$184,847.36	\$277,010.93	\$277,010.93
Deductions (1932 Act)	221,378.17	221,378.17	164,822.36
Net Estate (1932 Act)	\$0.00	\$55,632.76	\$112,118.57
Gross tax (1926 Act)	\$0.00	\$56.33	\$743.77
Total gross taxes (1926 and 1932 Acts)	\$0.00	\$1,894.29	\$3,096.97
Credit for State estate, inheritance, legacy, or succession taxes	0.00	0.00	0.00
Net tax	\$0.00	\$1,894.29	\$3,096.97
Deficiency			\$3,096.97

27 The deficiency bears interest at the rate of six per cent per annum from one year after decedent's death to the date of assessment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is earlier.

Upon receipt of a waiver or upon the expiration of sixty days from the date of this letter, if a petition is not filed with the Board of Tax Appeals, \$5,501.95 of the deficiency will be assessed. As the balance of the deficiency may be eliminated by credit for State estate, inheritance, legacy, or succession taxes, opportunity will be accorded for the submission of the evidence required by Article 9 of Regulations 70 (1929 Edition). If, after a reasonable time the evidence is not filed, the balance of the deficiency will be assessed. Please advise when the submission of this evidence may be expected.

Before United States Board of Tax Appeals

Answer—No. 76803

(Filed August 23, 1934)

The Commissioner of Internal Revenue, by his attorney, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in the paragraph of the petition numbered 1.

2. Admits the allegations contained in the paragraph of the petition numbered 2.

3. Admits the allegations contained in the paragraph of the petition numbered 3.

4. Denies that the determination of the deficiency is based upon errors as alleged in the paragraph of the petition numbered 4.

28 5. (a) Admits so much of the subparagraph (a) of the paragraph of the petition numbered 5 as alleges that on September 3, 1919, Henry Hallock, the decedent herein, made a transfer by way of a trust agreement with the First Trust and Savings Company of Cleveland, Ohio, as Trustee, but denies every other allegation contained in subparagraph (a) of the paragraph of the petition numbered 5.

(b) Denies the allegations contained in subparagraph (b) of the paragraph of the petition numbered 5.

(c) Admits so much of subparagraph (c) of the paragraph of the petition numbered 5 as alleges that 884 shares of 7% preferred stock of The Ohio Rubber Company, of the par value of \$100.00 each, which comprise the said trust estate, was valued by the respondent at \$80.00 per share, or a total of \$70,720.00, but denies all other allegations contained in said subparagraph (c) of the paragraph of the petition numbered 5.

(d) Denies the allegations contained in subparagraph (d) of the paragraph of the petition numbered 5.

(e) Admits the allegations contained in subparagraph (e) of the paragraph of the petition numbered 5.

6. Denies generally and specifically each and every allegation of the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the appeal be denied.

(Signed) ROBERT H. JACKSON,
Assistant General Counsel
for the Bureau of Internal Revenue.

Of Counsel:

EUGENE G. SMITH,
Special Attorney,
Bureau of Internal Revenue.

29 Before United States Board of Tax Appeals

Petition—No. 76927

(Filed July 14, 1934)

The above-named petitioner hereby petitions for a redetermination of the deficiency and proposed transferee assessment against The Union Trust Company, Successor of The First Trust and Sav-

ings Company, set forth by the Commissioner of Internal Revenue in his notice of deficiency and assessment (MT-ET-C1-3175), dated May 22, 1934, and as a basis of his proceeding alleges as follows:

1. The petitioner is the duly appointed, qualified, and acting Superintendent of Banks of the State of Ohio, and, as such, is in charge of the liquidation of The Union Trust Company, Successor of The First Trust and Savings Company, which was and is Trustee under a certain trust agreement executed by Henry Hallock and his then wife, Anne Lamson Hallock, and The First Trust and Savings Company, of Cleveland, Ohio, on September 3, 1919. The principal place of business of The Union Trust Company is Union Trust Building, Cleveland, Ohio.

2. The notice of deficiency and assessment (a copy of which is attached and marked "Exhibit A") was mailed to The Union Trust Company on May 22, 1934.

3. The taxes in controversy are estate taxes under the Revenue Act of 1926 and the Revenue Act of 1932 upon the Estate of Henry Hallock, who died October 10, 1932, and for \$6,096.97.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The inclusion as part of the gross estate of the decedent of the trust fund created by trust agreement between Henry Hallock and The First Trust and Savings Company of Cleveland, Ohio (now The Union Trust Company), dated September 3, 1919, of the alleged value of \$70,720, as a transfer to take effect in possession or enjoyment at or after death.

(b) The valuation of the trust estate created by said agreement of September 3, 1919, which trust estate consists of 884 shares of preferred stock of The Ohio Rubber Company, of Willoughby, Ohio, at \$70,720.

30. (c) The inclusion in the gross estate of said trust property at the full valuation thereof, without deduction of the value of the existing life estate or interest in said trust of Anne Lamson Hallock, the life beneficiary of all of the income thereof.

(d) The disallowance as deductions from the gross estate of debts and charges against the estate of \$56,555.81, on the alleged ground that no greater amount may be allowed as such deductions than the value of the probated estate which is being administered by Mary Q. Hallock as executrix.

(e) The assessment against the petitioner, as trustee and transferee, of the entire alleged deficiency of \$6,096.97.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) On September 3, 1919, Henry Hallock and his then wife, Anne Lamson Hallock, in contemplation of a divorce suit about to be instituted by the wife, made a separation and alimony agreement. At the same time, and pursuant to one of the requirements of said agreement, Henry Hallock made a trust agreement with The First Trust and Savings Company of Cleveland, Ohio, as Trustee. The

main purpose of the trust agreement was to produce the sum of \$500 per month, which the separation agreement provided was to be paid to Anne Lamson Hallock, and eventually there was deposited with the trustee 884 shares of 7% preferred stock of The Ohio Rubber Company, it being contemplated that if all dividends were paid on the preferred stock, the gross income of the trust estate would be \$6,188 per annum, which would pay the necessary \$6,000 per year to Anne Lamson Hallock and leave an additional \$188 per year as the estimated amount necessary to pay the trustee's expenses and compensation.

The trust agreement was subject to revocation or modification only with the written assent of both Henry Hallock and Anne Lamson Hallock. By its terms the net income of the trust estate, up to \$6,000 per year, is payable to Anne Lamson Hallock for life. The trust agreement contains the following provision as to the disposition of the trust estate upon the death of the life beneficiary:

31 "C. If and when Anne Lamson Hallock shall die then and in such event and thereupon the within trust shall terminate and said Trustee shall and will pay Party of the First Part if he then be living any accrued income, then remaining in said trust fund and shall and will deliver forthwith to Party of the First Part, the principal of the said trust fund. If and in the event said Party of the First Part shall not be living then and in such event payment and delivery over shall be made to Levitt Hallock and Helen Hallock, respectively, son and daughter of the Party of the First Part, share and share alike. If and in the event either said Levitt Hallock or Helen Hallock shall at such time be dead, the share which would have gone to him or her if living, shall go to the children of such deceased child and if there be no such children living, then said entire income and principal shall be paid to that child of Henry Hallock then living."

Anne Lamson Hallock obtained a divorce from Henry Hallock on October 28, 1919, is still living and has not remarried. The divorce decree itself made no provision for her by way of alimony or support.

Under the terms of the trust agreement the transfer was entirely completed at the time of the execution thereof, no change in possession or enjoyment took place at the death of the decedent and the transfer of no part of the trust estate took effect in possession or enjoyment at or after the death of the decedent, within the meaning of Section 302 (c) of the Revenue Act of 1926 or any amendments thereof.

(b) The trust agreement of September 3, 1919, and the transfer made thereunder, were supported by adequate and full consideration in money and moneys worth, since they were part of the aforesaid separation agreement, by the terms of which Anne Lamson Hallock released all rights of alimony, dower, inheritance, and other rights based on the marital relation between the parties. The trust and separation agreements were made prior to the amendment of Section

303 (d) of the Revenue Act of 1926 by Section 804 of the Revenue Act of 1932.

32 (c) The 884 shares of 7% preferred stock of the Ohio Rubber Company, of the par value of \$100.00 each, which comprise all of said trust estate, are valued by the respondent at \$70,720, or \$80.00 per share. This valuation is greatly in excess of the actual and fair market value of the stock at the date of decedent's death.

(d) Anne Lamson Hallock, having survived Henry Hallock, her life interest in said trust estate was in existence before and after the decedent's death and still continues. Even if the respondent's determination is partly correct and if any interest in the trust is deemed to have been transferred to take effect in possession or enjoyment at or after the decedent's death, in determining the value of this interest, the value of the life estate or interest of Anne Lamson Hallock should be deducted from the value of the entire trust estate. She was 63 years of age at the date of decedent's death.

(e) Excluding the specific exemptions, the return of Mary Q. Hallock, Executrix of the estate of Henry Hallock, deceased, sets up deductions of \$171,378.17. Exclusive of the trust estate held under said trust agreement of September 3, 1919, and of a life insurance trust, on account of which \$91,468.57 is included in the gross taxable estate and about which there is no controversy, the gross estate amounts to \$114,822.36. The respondent had disallowed the deductions in excess of \$114,822.36, amounting to \$56,555.81, on the ground that no greater sum may be allowed than the probated estate, although the gross taxable estate, both as returned by the executrix and as determined by the respondent, exceeds the total claimed deductions of \$171,378.17.

(f) The alleged value of the trust fund created by the trust agreement between Henry Hallock and The First Trust and Savings Company, of Cleveland, Ohio, now The Union Trust Company, dated September 3, 1919, is determined at \$70,720.00. The entire gross estate is determined to be \$277,010.93. In no event should the petitioner or said trust estate be liable for a greater part of any deficiency than is produced by the inclusion of the actual and fair market value of the stock held under said trust at the time of

33 decedent's death, after deducting therefrom the value of the existing life estate or interest of the said trust of Anne Lamson Hallock, the life beneficiary of all of the income thereof, as part of the gross estate.

Wherefore, the petitioner prays that this Board may hear the proceeding and determine that there is no deficiency in Federal Estate Tax liability of the Estate of Henry Hallock, deceased, and that no assessment may be made against The Union Trust Company as trustee or transferee, or this petitioner, or otherwise.

A. V. CANNON and
W. H. ANNAT,

Counsel for Petitioner,

1568 Union Trust Bldg., Cleveland, Ohio.

[Duly sworn to by G. H. Robertson; jurat omitted in printing.]

34

Exhibit A to petition

Letterhead of

TREASURY DEPARTMENT

WASHINGTON

• MT-ET-C1-3175-18th Ohio.
 Estate of Henry Hallock.
 Date of Death—October 10, 1932.

MAY 22, 1934.

THE UNION TRUST COMPANY, SUCCESSOR OF THE FIRST TRUST AND
 SAVINGS COMPANY,
*Trustee and Transferee, Estate of Henry Hallock, Cleveland,
 Ohio.*

SIRS: Pursuant to Sections 315 (b) and 316 of the Revenue Act of 1926, there is proposed for assessment against you the sum of \$6,096.97, plus interest thereon, constituting your liability as a transferee, by virtue of a trust instrument executed by the decedent on or about September 3, 1919, under which the decedent conveyed, assigned, and delivered to you certain property to be held by you as trustee. This sum represents the Federal estate tax due upon the transfer of the net estate of the decedent, Henry Hallock, who died October 10, 1932, a resident of Shaker Heights, Ohio. The sum of \$6,096.97 represents a deficiency which results from changes in the items disclosed in the return filed for this estate as follows:

GROSS ESTATE

	Returned	Determined
Mortgages, notes, cash, and insurance		
Item 3		
Transfers	\$70,023.00	\$91,468.57
By trust instrument executed on September 3, 1919	\$0.00	70,720.00

The Bureau finds that this transfer comes within the purview of Sections 302 (c) and 302 (d) of the Revenue Act of 1926.

35

DEDUCTIONS

	Returned	Determined
Funeral expenses	\$1,036.00	
Executrix' commissions	1,229.00	
Attorney's fees	3,000.00	
Miscellaneous administration expenses	350.00	
Debts of decedent	2,677.12	
Unpaid mortgages	154,666.05	
Support of dependents	8,400.00	
		\$114,822.36

The deductions are adjusted to the determined amount since no greater sum may be allowed than the value of the probated estate which is subject to the payment of these deductions. The computation of the amount determined is as follows:

	Returned	Determined
Gross Estate		\$277,010.93
Transfers	\$70,720.00	162,188.57
Insurance payable to beneficiaries other than the estate less \$10,000.00	91,468.57	\$114,822.36

SUMMARY

	Returned	Determined
Gross estate		\$277,010.93
Deductions (1926 Act)	\$184,847.36	214,822.36
Net estate (1926 Act)	\$0.00	\$62,188.57
Gross Estate		\$277,010.93
Deductions (1932 Act)	\$184,847.36	164,822.36
Net Estate (1932 Act)	\$0.00	\$112,188.57
Gross tax (1926 Act)	\$0.00	\$743.77
Total gross taxes (1926 and 1932 Acts)	\$0.00	\$6,006.97
Credit for State estate, inheritance, legacy, or succession taxes	0.00	.00
Net tax	\$0.00	\$6,006.97
Deficiency		\$6,006.97

36 In accordance with the provisions of Title III of the Revenue Act of 1926, you are allowed sixty days from the date of the mailing of this letter (not counting Sunday as the sixtieth day) within which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Washington, D. C., and must be mailed in time to reach the Board within the sixty-day period prescribed.

Where a transferee has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the sixty days prescribed, and an assessment has been made, or where a transferee has filed a petition and an assessment in accordance with the decision, which has become final, has been made, the unpaid amount of such assessment must be paid upon notice and demand from the Collector of Internal Revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute the enclosed Form 890 (1) waiving the restrictions on the assessment and collection of such deficiency and (2) consenting to the assessment and collection thereof, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of the Estate Tax Division, Miscellaneous Tax Unit. In the

event that you acquiesce in only a part of the determination, the enclosed form of waiver should be executed with respect to the amount of the deficiency to which you agree.

Respectfully,

GUY T. HELVERING,
Commissioner.

By (Signed) D. S. BLISS,
Deputy Commissioner.

Enclosure:

Waiver—Form 890.

37 Before United States Board of Tax Appeals

Answer—No. 76927

(Filed August 23, 1934)

The Commissioner of Internal Revenue, by his attorney, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, for answer to the petition filed by the above-named petitioners, admits and denies as follows:

1. Admits the allegations contained in the paragraph of the petition numbered 1.
2. Admits the allegations contained in the paragraph of the petition numbered 2.
3. Admits the allegations contained in the paragraph of the petition numbered 3.
4. Denies that the determination of the deficiency is based upon errors as alleged in the paragraph of the petition numbered 4.
5. (a) Admits so much of the subparagraph (a) of the paragraph of the petition numbered 5 as alleges that on September 3, 1919, Henry Hallock, the decedent herein, made a transfer by way of a trust agreement with the First Trust and Savings Company of Cleveland, Ohio, as Trustee, but denies every other allegation contained in subparagraph (a) of the paragraph of the petition numbered 5.
(b) Denies the allegations contained in subparagraph (b) of the paragraph of the petition numbered 5.
(c) Admits so much of subparagraph (c) of the paragraph of the petition numbered 5 as alleges that 884 shares of 7% preferred stock of The Ohio Rubber Company, of the par value of \$100.00 each, which comprise the said trust estate, was valued by the respondent at \$80.00 per share, or a total of \$70,720.00, but denies all other allegations contained in said subparagraph (c) of the paragraph of the petition numbered 5.
(d) Denies the allegations contained in subparagraph (d) of the paragraph of the petition numbered 5.
(e) Admits the allegations contained in subparagraph (e) of the paragraph of the petition numbered 5.

(f) Admits so much of subparagraph (f) of the paragraph of the petition numbered 5 as alleges that the respondent has determined the value of the trust funds created by the trust agreement between Henry Hallock, the decedent herein, and the First Trust and Savings Company of Cleveland, Ohio, now the Union Trust Company, dated September 3, 1919, to be \$70,720.00; that the respondent has determined the entire gross estate to be \$277,010.93, but denies every other allegation contained in said subparagraph (f) of the paragraph of the petition numbered 5.

6. Denies generally and specifically each and every allegation of the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the appeal be denied.

(Signed) ROBERT H. JACKSON,
Assistant General Counsel
for the Bureau of Internal Revenue.

Of counsel:

EUGENE G. SMITH,
Special Attorney,
Bureau of Internal Revenue.

Before United States Board of Tax Appeals

Amended answer—No. 76927

(Filed October 13, 1935)

The Commissioner of Internal Revenue, by his attorney, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, for amended answer to the petition filed by the above-named petitioner, admits, denies, and avers as follows:

1. Admits the allegations contained in the paragraph of the petition numbered 1.
- 39 2. Admits the allegations contained in the paragraph of the petition numbered 2.
3. Admits the allegations contained in the paragraph of the petition numbered 3.
4. Denies that the determination of the deficiency is based upon errors as alleged in the paragraph of the petition numbered 4.
5. (a) Admits so much of subparagraph (a) of the paragraph of the petition numbered 5 as alleges that on September 3, 1919, Henry Hallock, the decedent herein, created a revocable trust naming the First Trust and Savings Company of Cleveland, Ohio, as trustee, but denies every other allegation contained in subparagraph (a) of the paragraph of the petition numbered 5.
- (b) Denies the allegations contained in subparagraph (b) of the paragraph of the petition numbered 5.

(c) Admits so much of subparagraph (c) of the paragraph of the petition numbered 5 as alleges that 884 shares of 7% preferred stock of The Ohio Rubber Company, of the par value of \$100.00 each, which comprise the said trust estate, was valued by the respondent at \$80.00 per share, or a total of \$70,720.00, but denies all other allegations contained in said paragraph (c) of the paragraph of the petition numbered 5.

(d) Denies the allegations contained in subparagraph (d) of the paragraph of the petition numbered 5.

(e) Admits the allegations contained in subparagraph (e) of the paragraph of the petition numbered 5.

(f) Admits so much of subparagraph (f) of the paragraph of the petition numbered 5 as alleges that the respondent has determined the value of the trust funds created by the trust agreement between Henry Hallock, the decedent herein, and the First Trust and Savings Company of Cleveland, Ohio, now the Union Trust Company, dated September 3, 1919, to be \$70,720.00; that the respondent has determined the entire gross estate to be \$277,010.93, but denies every other allegation contained in said subparagraph (f) of the paragraph of the petition numbered 5.

6. The facts relied upon by the respondent to show the petitioner's liability as transferee are as follows:

40 (a) That at the time of the decedent's death his estate was and is now insolvent.

(b) On or about September 3, 1919, the decedent transferred to the petitioner as trustee under a deed of trust dated September 3, 1919, certain securities of the value as of the date of death of \$70,720.00.

(c) Upon the decedent's death the securities, representing the corpus of the said trust estate, were in the hands of the petitioner, and the corpus of the said trust is now in the hands of the petitioner in an amount in excess of the deficiency determined by the Commissioner in the notice of deficiency dated May 22, 1934.

(d) That because of the aforesaid transfer of assets this petitioner is trustee and transferee within the purview of Sections 315 (b) and 316 of the Revenue Act of 1926, and is liable in this proceeding as such.

7. Denies generally and specifically each and every allegation of the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the respondent's determination in this proceeding be approved.

(Signed) ROBERT H. JACKSON,
*Assistant General Counsel
for the Bureau of Internal Revenue.*

Of Counsel:

EUGENE G. SMITH,
*Special Attorney,
Bureau of Internal Revenue.*

Reply—No. 76927

(Filed December 12, 1935)

The petitioner, S. H. Squire, Superintendent of Banks of the State of Ohio, in charge of the liquidation of The Union Trust Company, Successor of The First Trust and Savings Company, Trustee, Cleveland, Ohio, by his attorney, W. H. Annat, for reply to the amended answer filed by the above named respondent admits, denies and avers as follows:

5. (a) Admits that on September 3, 1919, Henry Hallock, the decedent herein, created a revocable trust, naming The First Trust and Savings Company, of Cleveland, Ohio, as Trustee, but avers that such trust could be revoked only by the written assent of said Henry Hallock and the beneficiary in said trust agreement, Anne Lamson Hallock.

6. (a) Admits the allegations contained in subparagraph (a) of the amended answer numbered 6.

6. (b) Admits the allegations contained in subparagraph (b) of the amended answer numbered 6.

6. (c) Admits the allegations contained in subparagraph (c) of the amended answer numbered 6.

6. (d) Denies the allegations contained in subparagraph (d) of the paragraph numbered 6.

Wherefore, petitioner prays that this Board find that there is no deficiency in federal estate tax liability of the Estate of Henry Hallock, deceased, and that no assessment be made against the Union Trust Company, as trustee or transferee, or against this petitioner, or otherwise.

W. H. ANNAT,

1568 Union Trust Building, Cleveland, Ohio,
Counsel for Petitioner.

Stipulation of facts—No. 76802

(Filed December 12, 1935)

The following is hereby stipulated by and between counsel for the petitioners and for the respondent, without prejudice to the right of either party to offer other testimony:

1. Attached hereto and marked "Exhibit A" is a copy of the trust agreement between Henry Hallock and The First Trust & Savings Company dated September 3, 1919, which created the trust which is the subject of this proceeding.

2. Attached hereto and marked "Exhibit B" is a copy of the separation and alimony agreement dated September 3, 1919, between Henry Hallock and his then wife, Anne Lamson Hallock, pursuant to which the trust agreement marked "Exhibit A" was executed.

3. Henry Hallock and Anne Lamson Hallock were divorced by the Insolvency Court of Cuyahoga County, Ohio, in October of 1919.

5. On October 10, 1932, the date of Henry Hallock's death, the trust estate under the trust agreement marked "Exhibit A" consisted of 884 shares of 7% preferred stock of The Ohio Rubber Company. This stock was valued by the respondent at \$80.00 per share.

6. Anne Lamson Hallock was 63 years old on October 10, 1932; is still living and has never remarried since her divorce from Henry Hallock.

7. On the basis of the valuation of \$70,720.00 put by the respondent on the stock of The Ohio Rubber Company comprising the trust estate and the age of Anne Lamson Hallock at the death of the decedent, the fair value of the life estate or interest of Anne Lamson Hallock in the trust estate was \$25,743.00 at the date of the death of Henry Hallock.

8. The debts and deductions of \$171,378.17 claimed in the estate tax return filed by petitioners were incurred or contracted bona fide and for an adequate consideration in money or money's worth. The probated estate as listed in the appraisal filed in the Probate Court of Cuyahoga County, Ohio, amounts to \$114,822.36. The gross taxable estate, which includes a life insurance trust, as well as the trust which is the subject of this appeal, exceeds the total claimed deductions. The respondent has disallowed the deductions in excess of the probated estate, which excess is \$56,555.81.

9. On or about September 1, 1925, the decedent transferred to the petitioners as Trustees under an agreement of trust dated September 1, 1925, insurance policies taken out on his own life having an aggregated face value of approximately \$200,000.00. At the time of decedent's death the net value of the insurance held by said Trustees under said insurance trust agreement was about \$110,000.00, and the proceeds or investments of the proceeds now in the hands of the Insurance Trustees exceed in amount the deficiency determined by the Commissioner in the deficiency notice dated May 22, 1934. That the said insurance passed under contracts executed by the decedent in favor of specific beneficiaries, the petitioners herein, and that the respondent has proposed for assessment the deficiency herein, pursuant to Sections 315 (b) and 316 of the Revenue Act of 1926:

WALKER H. NYE,

Counsel for Petitioners.

ROBERT H. JACKSON,

Counsel for Respondents.

Exhibit A to stipulation

This indenture made this 3rd day of September 1919 between Henry Hallock, residing at Cleveland, hereinafter designated as "Party of the First Part," and The First Trust & Savings Company, a corporation organized and existing under the laws of the State of Ohio sometimes hereinafter called Trustee, Party of the Second Part, witnesseth that:

Whereas Party of the First Part desires to create a trust of the property and for the purposes as hereinafter mentioned,

44 Now, therefore, this indenture witnesses:

That in consideration of the premises, mutual covenants, and of other good and valuable considerations, and for the sum of One Dollar (\$1.00) by each of the parties paid, receipt of which is hereby acknowledged at or before the ensembling and delivery of these presents; Party of the First Part has granted, conveyed, assigned, set over and delivered, and by these presents does grant, convey, assign, set over and deliver unto Party of the Second Part, its successors and assigns, all that certain property and securities as more fully set forth in a schedule hereto attached, marked "Exhibit A," and by reference made a part hereof as though fully and at length set forth herein, together with all appurtenances and all estate and rights of Party of the First Part thereto.

To have and to hold, all and singular, the above granted and described property and securities unto said Party of the Second Part, its successors, and assigns, in trust nevertheless for and upon the following uses and purposes and subject to the terms, conditions, powers, agreements, limitations, and instructions hereinafter set forth, to wit:

1. For and during the term of the natural life of Anne Lamson Hallock, the present wife of Party of the First Part, to receive, hold, manage said trust estate, in the manner hereinafter specified; to collect, recover, and receive the rents, issues, interest, dividends, income, and profits thereof, hereinafter called "Income," and after deducting the commissions of the Trustee as hereinafter provided, to deposit the same in a sum not to exceed six thousand dollars (\$6,000.00) per annum in a bank account to be opened in Trustee's bank by said Anne Lamson Hallock and to her credit; to pay any sum or sums of income in excess of said sum of Six Thousand Dollars (\$6,000.00) per annum, less the amount to be paid under paragraphs two and three, to Party of the First Part, his heirs, executors, administrators, or assigns.

2. Trustee is hereby authorized and empowered to pay out of the income received out of the trust any and all taxes which may become properly payable at any time under the laws of the United States or any state, county, or municipality on said trust property,
45 or for any transfer thereof, or transfer affecting the same; and to affix and cancel tax stamps, in accordance with any of the provisions of any said laws.

3. Trustee shall be entitled to receive as compensation for its service in the administration of this trust, an annual commission of three per cent per annum upon all cash income received by it, and is authorized to deduct such commission before paying the income to the beneficiary hereunder.

4. Trustee by joining in the execution of this instrument signifies and declares its acceptance of the trust herein created, and covenants and agrees with Party of the First Part to faithfully perform all duties to be performed hereunder to the best of its knowledge, skill, and ability; and shall be responsible for the safe custody of the securities and for reasonable care in the disposition of all income which it may receive; but Trustee shall not be responsible for any mistake in judgment or decrease in value of the trust fund.

5. Party of the First Part covenants and agrees to make, execute, and deliver in due form of law, such other and further assignments, conveyances, or other instruments as Trustee may deem required or necessary to effectuate the terms thereof.

6. In the event that Trustee shall request from Party of the First Part written instructions as to the management of said trust, the exercise of any rights granted by right of virtue of said stock or any other security and Party of the First Part shall neglect or refuse to furnish such instructions for a period of thirty (30) days or in the event the Party of the First Part shall be unable, for any reason, to furnish such instructions, Trustee is hereby authorized and empowered to manage said trust estate pursuant to its construction of the within instrument and to its best judgment.

7. Trustee may at any time terminate this agreement in whole by giving thirty (30) days' notice in writing to the Party of the First Part and to beneficiary. Such notice shall be deemed sufficient if addressed to Party of the First Part and the beneficiary at their last places of residence known to Trustee but in no event shall its duties hereunder terminate or its right to the trust fund terminate until

a new trustee shall have been selected by the Party of the First Part and beneficiary; and in such event the Trustee shall and will turn over all said securities to said newly selected Trustee whereupon The First Trust & Savings Company shall be entitled to be discharged, released, and relieved from all liability to the parties thereto.

A. Party of the First Part hereby expressly reserves to himself, his heirs, executors, administrators, and assigns the right of increasing the principal of the trust fund from time to time by adding thereto personal property and securities which the Trustee shall receive, hold, and manage in the same manner as herein specified in respect of the property and securities forming the original trust.

B. Party of the First Part during the continuance of the trust for himself, his heirs, executors, administrators, and assigns reserves the right to substitute in place and in lieu of any securities which are or may be at any time part of the said trust fund, new and different

securities which are in the opinion of Trustee, whose opinion shall be absolutely binding, of equal value to the securities so sought by Party of the First Part to be changed.

C. If and when Anne Lamson Hallock shall die, then and in such event and thereupon the within trust shall terminate and said Trustee shall and will pay Party of the First Part if he then be living any accrued income then remaining in said trust fund and shall and will deliver forthwith to Party of the First Part, the principal of the said trust fund. If and in the event said Party of the First Part shall not be living then and in such event payment and delivery over shall be made to Levitt Hallock and Helen Hallock, respectively son and daughter of the Party of the First Part, share and share alike. If and in the event either said Levitt Hallock or Helen Hallock shall at such time be dead, the share which would have gone to him or her if living, shall go to the children of such deceased child and if there be no such children living, then said entire income and principal shall be paid to that child of Henry Hallock then living.

D. Party of the First Part reserves to himself, his heirs, executors, administrators, and assigns the right at his option if and in the event said Anne Lamson Hallock shall marry any other person than said

47 Henry Hallock to pay to said Trustee on or within six months after said marriage the sum of Twenty Thousand Dollars (\$20,000.00) and deliver over to said Trustee evidence that said Anne Lamson Hallock has so remarried. Upon receipt of said fund and said proof by Trustee, if and in the event said proof is satisfactory to Trustee, then and in such event Trustee shall deliver the said fund of Twenty Thousand Dollars (\$20,000.00) to said Anne Lamson Hallock. This trust shall terminate and the disposition of the then accrued income and trust fund shall be made pursuant to Paragraph C above.

This trust may be terminated, modified, altered, canceled or in any way varied by the written consent of the Party of the First Part and beneficiary.

In Witness Whereof the said Party of the First Part for himself, his heirs, executors, administrators, and assigns, and said Party of the Second Part, by its officers duly authorized in the premises, for itself, its successors and assigns, have hereunto set their hands and seals at Cleveland, Ohio, on the day and year hereinbefore written.

[SEAL] (Signed) HENRY HALLOCK, *Party of the First Part.*

THE FIRST TRUST & SAVINGS COMPANY,

By GEO. N. SHERWIN, *Vice President.*

Attest: R. B. PETTIT, *Asst. Secy.,*

Party of the Second Part.

State of Ohio, Cuyahoga County, ss:

Henry Hallock being duly sworn, deposes and says that he is the father of the following-named children, that said children are the only children of the said Henry Hallock, to wit: Levitt Hallock, Helen Hallock.

He further says that he makes this affidavit for the purposes of the within trust agreement.

(Signed) HENRY HALLOCK.

Subscribed and sworn before me by said Henry Hallock this 3rd day of September A. D. 1919.

[SEAL]

(Signed) O. O. VROOMAN,
Notary Public.

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Exhibit B to stipulation

This Agreement made at Cleveland, Ohio, this 3rd day of September 1919, by and between Henry Hallock and Anne Lamson Hallock, Husband and Wife, witnesseth that:

Whereas unfortunate differences have arisen between the parties hereto, rendering it impossible hereafter for them to live together and said parties have agreed upon immediate separation, and

Whereas, said Anne Lamson Hallock purposes to sue said Henry Hallock, for divorce, and

Whereas, Parties are desirous of determining between themselves the question of alimony and financial support,

Now, therefore, in consideration of the premises, said Anne Lamson Hallock hereby releases said Henry Hallock from all obligations for future support for herself; and she does further release and relinquish unto said Henry Hallock, his heirs, executors, administrators, and assigns, all rights and claims by way of dower, inheritance and descent in and to any real property of said Henry Hallock now owned or hereafter acquired, any and all rights or claims to distribute share of his personal estate, now owned or hereafter acquired, and all claims and allowance for years support, and right to reside in his mansion house or other rights or claims of every kind and nature arising or growing out of said marriage relation; and said Anne Lamson Hallock for consideration aforesaid and in consideration of agreements of said Henry Hallock herein contained, does further covenant and agree that she will not in any manner incur or contract any debts on the credit of said Henry Hallock and will not incur any liabilities on his behalf; and that, in case an action for divorce should hereafter be instituted by either Party hereto, she will not ask or apply for any allowance for counsel fees or any alimony either temporary or permanent.

The sums of money herein provided for to be paid by said Henry Hallock shall be in full of all such claims and demands, as well as of support, rights of dower, inheritance, and distributive share.

49 In consideration whereof said Henry Hallock hereby covenants and agrees that said Anne Lamson Hallock, shall have sole and exclusive custody, control, and care of Helen Hallock, daughter of said Parties hereto, and that said Henry Hallock shall and will support said daughter, Helen.

The said Henry Hallock in and for the consideration aforesaid does hereby release and relinquish to said Anne Lamson Hallock,

her heirs, executors, administrators, and assigns, all rights and claims of dower, inheritance, descent, distribution, or other rights and claims in any manner arising and growing out of the marriage relations now existing between said Parties, in or to the estate of said Anne Lamson Hallock, real, personal, or mixed, now owned or hereafter acquired; and by these presents said Henry Hallock shall be forever barred therefrom.

Said Henry Hallock further covenants and agrees that during the pendency of the divorce action to be brought by said Anne Lamson Hallock, he shall and will pay said Anne Lamson Hallock the sum of Five Hundred Dollars (\$500.00) per month. When and so soon and if Anne Lamson Hallock secures a decree of divorce from said Henry Hallock, said Henry Hallock shall and will pay said Anne Lamson Hallock the sum of Five Hundred Dollars (\$500.00) per month so long as she may live and so long as she does not remarry. Said Henry Hallock shall and will secure payments of said sum of Five Hundred Dollars (\$500.00) per month by executing that certain trust deed hereto attached, marked "Exhibit A," by reference made a part hereof as though fully and at length set forth herein, and shall and will forthwith deposit under the terms of said trust agreement Capital Stock in The Ohio Rubber Company, an Ohio corporation, having a face and par value of not less than Thirty Thousand Dollars (\$30,000.00) pursuant to terms of said trust agreement, and shall and will pay over to said Anne Lamson Hallock the sum of Five Thousand Dollars (\$5,000.00) in cash. On or before the first day of September of each of the years 1920, 1921, 1922, 1923, 1924, 1925, respectively, in equal installments, he shall and will deposit securities approvable by The First Trust and Savings Company as Trustee, having a total face or par value of Sixty Thousand Dollars (\$60,000.) until the dividends on said
50 stock and securities so deposited shall and will produce the sum of Six Thousand Dollars (\$6,000.00) per annum. Up to the time when and until said dividends shall equal said sum of Six Thousand Dollars (\$6,000.00) per annum or at any time when said income shall not equal Six Thousand Dollars (\$6,000.00) per annum, said Henry Hallock shall and will pay monthly to Anne Lamson Hallock the difference between Five Hundred Dollars (\$500.00) per month and the then income of said trust fund.

When so soon as and if said Anne Lamson Hallock shall secure a divorce from said Henry Hallock, said Henry Hallock shall and will deed to said Anne Lamson Hallock free and clear of any and all incumbrances the dwelling house on Cornell Road, now occupied by them as a Homestead, together with all household furniture and appurtenances therein situated.

If and in the event said Anne Lamson Hallock shall marry any other person other than said Henry Hallock, then and in such event said Henry Hallock may at his option pay to The First Trust and Savings Company pursuant to terms of attached trust agreement,

the sum of Twenty Thousand Dollars (\$20,000.00) in cash and upon said payment The First Trust and Savings Company shall make such disposition of said cash fund and of the securities constituting trust fund and of the income thereof as are in said Paragraphs 7-D and 7-C of said trust agreement provided.

In witness whereof the parties have hereunto set their hands and seals this 3rd day of September A. D. 1919.

(Signed) HENRY HALLOCK,
Party of the First Part.

(Signed) ANNE LAMSON HALLOCK,
Party of the Second Part.

In the presence of:

(Signed) L. A. O'NEIL.

(Signed) A. V. CUNNEY.

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Before United States Board of Tax Appeals

Stipulation of facts—No. 76803

(Filed December 12, 1935)

The following is hereby stipulated by and between counsel for the petitioner and for the respondent, without prejudice to the right of either party to offer other testimony:

1. Attached hereto and marked "Exhibit A" is a copy of the trust agreement between Henry Hallock and The First Trust & Savings Company dated September 3, 1919, which created the trust which is the subject of this proceeding.

2. Attached hereto and marked "Exhibit B" is a copy of the separation and alimony agreement dated September 3, 1919, between Henry Hallock and his then wife, Anne Lamson Hallock, pursuant to which the trust agreement marked "Exhibit A" was executed.

3. Henry Hallock and Anne Lamson Hallock were divorced by the Insolvency Court of Cuyahoga County, Ohio, in October of 1919.

5. On October 10, 1932, the date of Henry Hallock's death, the trust estate under the trust agreement marked "Exhibit A" consisted of 884 shares of 7% preferred stock of The Ohio Rubber Company. This stock was valued by the respondent at \$80.00 per share.

6. Anne Lamson Hallock was 63 years old on October 10, 1932; is still living and has never remarried since her divorce from Henry Hallock.

7. On the basis of the valuation of \$70,720.00 put by the respondent on the stock of The Ohio Rubber Company comprising the trust estate and the age of Anne Lamson Hallock at the death of the decedent, the fair value of the life estate or interest of Anne Lamson Hallock in the trust estate was \$25,743.00 at the date of the death of Henry Hallock.

8. The debts and deductions of \$171,378.17 claimed in the estate tax return filed by petitioner were incurred or contracted bona fide and for an adequate consideration in money or moneys worth. The probated estate as listed in the appraisal filed in the Probate Court of Cuyahoga County, Ohio, amounts to \$114,822.36. The gross taxable estate, which includes a life insurance trust, as well as the trust which is the subject of this appeal, exceeds the total claimed deductions. The respondent has disallowed the deductions in excess of the probated estate, which excess is \$56,555.81.

WALKER H. NYE,
Counsel for Petitioner.

ROBERT H. JACKSON,
Counsel for Respondent.

Exhibits "A" and "B" attached to stipulation in Docket 76802.

Before United States Board of Tax Appeals

Stipulation of facts—No. 76927

(Filed December 12, 1935)

It is hereby stipulated and agreed by and between the petitioner and the respondent, by their respective attorneys of record, that the following facts are true and that the Board may incorporate the same into its findings of fact, subject, however, to the right of either party at the hearing to introduce other and further evidence not inconsistent with this stipulation:

1. Attached hereto and marked "Exhibit A" is a copy of the trust agreement between Henry Hallock and The First Trust & Savings Company dated September 3, 1919, which created the trust which is the subject of this proceeding.

2. Attached hereto and marked "Exhibit B" is a copy of the separation and alimony agreement dated September 3, 1919, between Henry Hallock and his then wife, Anne Lamson Hallock, pursuant to which the trust agreement marked "Exhibit A" was executed.

3. Henry Hallock and Anne Lamson Hallock were divorced by the Insolvency Court of Cuyahoga County, Ohio, on October 28, 1919.

4. On October 10, 1932, the date of Henry Hallock's death, the trust estate under the trust agreement marked "Exhibit A" consisted of 884 shares of 7% preferred stock of The Ohio Rubber Company. This stock was valued by the respondent at \$80.00 per share.

5. Anne Lamson Hallock was 63 years old on October 10, 1932; is still living and has never remarried since her divorce from Henry Hallock.

6. On the basis of the valuation of \$70,720.00 put by the respondent on the stock of The Ohio Rubber Company comprising the trust

estate and the age of Anne Lamson Hallock at the death of the decedent, the fair value of the life estate or interest of Anne Lamson Hallock in the trust estate was \$25,743.00 at the date of the death of Henry Hallock.

7. The debts and deductions of \$171,378.17 claimed in the estate tax return filed by petitioner were incurred or contracted bona fide and for an adequate consideration in money or money's worth. The probated estate as listed in the appraisal filed in the Probate Court of Cuyahoga County, Ohio, amounts to \$114,822.36. The gross taxable estate asserted by the respondent, in which he includes a certain life insurance trust, as well as the trust which is the subject of this appeal, exceeds the total claimed deductions. The respondent has disallowed the deductions in excess of the valuation of the assets of the probated estate, which excess is \$56,555.81. The said insurance passed under contracts executed by the decedent in favor of specific beneficiaries. The petitioner herein, said The Union Trust Company; said The First Trust and Savings Company and said Anne Lamson Hallock were not included or named as or among said specific beneficiaries, and have not and never had any interest therein. The respondent has proposed for assessment the deficiency herein, pursuant to Sections 315 (b) and 316 of the Revenue Act of 1926.

8. The trust created by said trust agreement dated September 3, 1919, has not been terminated, modified, altered, cancelled, or in any way varied by the written assent of said Henry Hallock and
 54 Anne Lamson Hallock, or otherwise, and has been ever since it was created and now is in full force and effect.

W. H. ANNAT,
Counsel for Petitioner.
 ROBERT H. JACKSON,
Counsel for Respondent.

Exhibits "A" and "B" attached to stipulation in Docket 76802.

Before United States Board of Tax Appeals

MARY Q. HALLOCK AND CENTRAL UNITED NATIONAL BANK OF CLEVELAND, TRUSTEES, PETITIONERS, ET AL.¹

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 76802, 76803, 76927. Promulgated May 19, 1936

1. GROSS ESTATE—TRUST.—Decedent transferred a portion of his property to a trustee, the income to be paid to his divorced wife. Trust instrument provided that if beneficiary predeceased him the

¹ Proceedings of the following petitioners are consolidated herewith: Mary Q. Hallock, Executrix of the Estate of Henry Hallock, Deceased; S. H. Squire, Superintendent of Banks of the State of Ohio in Charge of the Liquidation of the Union Trust Co., Successor of the First Trust and Savings Co., Trustee, Cleveland, Ohio.

property was to be delivered over to him, but if he predeceased the beneficiary it was to be delivered over to his children. Beneficiary outlived settlor. Held, that the transfer to the trustee was not

55 "intended to take effect in possession or enjoyment at or after his death" and the property transferred is not includable in his gross estate under section 302 (c) of the Revenue Act of 1926. *Helvering v. St. Louis Union Trust Co.*, 296 U. S. 39; and *Becker v. St. Louis Union Trust Co.*, 296 U. S. 48.

2. *Id.*—The decedent as settlor reserved the power, to be exercised jointly with the beneficiary, to revoke the trust. Rule enunciated in *Helvering v. City Bank Farmers Trust Co.*, 296 U. S. 85, to the effect that property so transferred must be included in gross estate under section 302 (d) of the Revenue Act of 1926, recognized, but held, following *Helvering v. Helmholz*, 296 U. S. 93, and *White v. Poor*, 296 U. S. 98, that inasmuch as the transfer was made before the statute was enacted, at which time it was not taxable, the statute cannot be applied retroactively, for to do so would be violative of the Fifth Amendment.

3. DEDUCTIONS.—Section 303 (a) (1) of the Revenue Act of 1926 applied and held, following *Union Guardian Trust Co., Administrator*, 32 B. T. A. 996, and *Commissioner v. Strauss*, 77 Fed. (2d) 401, that the respondent erred in limiting the deductions from the gross estate to a sum no greater "than the value of the probated estate which is subject to the payment of the deductions."

Walker H. Nye, Esq., for the petitioners in Docket Nos. 76802 and 76803.

W. H. Annat, Esq., for the petitioner in Docket No. 76927.

Eugene G. Smith, Esq., for the respondent.

Opinion

(May 19, 1936)

MELLOTT: The respondent determined a deficiency in estate taxes against the estate of Henry Hallock, in the amount of \$6,096.97 under the Revenue Acts of 1926 and 1932. (Docket No. 76803.) A deficiency in the same amount was determined against the petitioners in dockets numbered 76802 and 76927 as transferees. In these
56 proceedings, consolidated for hearing, petitioners seek a re-determination of the deficiencies. All of the facts are stipulated.

Henry Hallock died October 10, 1932, testate. His widow, Mary Q. Hallock, was duly appointed executrix of his estate. She filed an estate tax return showing no tax to be due. Respondent determined that 884 shares of 7 percent preferred stock of the Ohio Rubber Co., valued at \$70,720, should have been included in the estate and accordingly he added such amount. He also reduced the deductions on account of debts and charges against the estate from \$171,378.17.

reported by the executrix, to \$114,822.36, on the theory, as stated by him in his notice of deficiency, that "no greater amount may be allowed than the value of the probated estate which is subject to the payment of such items."

The facts with reference to the shares of stock of the Ohio Rubber Co. are as follows. On September 3, 1919, Henry Hallock entered into a separation agreement with his then wife, Anne Lamson Hallock, which provided for the payment to her of \$500 per month by way of alimony and for the creation of a trust to produce such sum. On the same day Henry Hallock transferred in trust to the First Trust & Savings Co. of Cleveland, Ohio, 884 shares of 7 percent preferred stock of the Ohio Rubber Co. The dividends of such stock amounted to \$6,188 per annum, sufficient to pay the necessary \$6,000 per year to the beneficiary and leave \$188 per year for the expenses and compensation of the trustee. The Union Trust Co. was the successor in trust of the First Trust & Savings Co., and it is now in liquidation by S. H. Squire, Superintendent of Banks of the State of Ohio.

Anne Lamson Hallock secured a divorce from Henry Hallock on October 28, 1919. She is still living and has not remarried. The trust agreement contained the following provision with reference to the disposition of the trust estate:

"C. If and when Anne Lamson Hallock shall die then and in such event and thereupon the within trust shall terminate and said Trustee shall and will pay Party of the First Part if he then be living any accrued income, then remaining in said trust fund and shall and will deliver forthwith to Party of the First Part, the principal of the said trust fund. If and in the event said party of the
57 First part shall not be living then and in such event payment and delivery over shall be made to Levitt Hallock and Helen Hallock, respectively son and daughter of the Party of the First Part, share and share alike. If and in the event either said Levitt Hallock or Helen Hallock shall at such time be dead, the share which would have gone to him or her if living, shall go to the children of such deceased child and if there be no such children living, then said entire income and principal shall be paid to that child of Henry Hallock then living."

The respondent concluded that the trust estate amounting to \$70,720 came "within the purview of sections 302 (c) and 302 (d) of the Revenue Act of 1926" and added such amount to the gross estate.

The petitioners in Docket No. 76802 are trustees under an agreement of trust dated September 1, 1925, to whom the decedent had transferred certain policies of life insurance taken out on his own life. No issue is involved herein relative to such transfer, but it is stipulated that the proceeds, or the investment of the proceeds in the hands of the trustee, exceed in amount the deficiency determined by the respondent. Thus, if the deficiency is upheld, such petitioners are liable for the tax as transferees.

Of the several errors assigned in the various petitions the following were relied upon at the hearing and upon brief:

(1) The inclusion as part of the gross estate of the decedent of a trust fund created by a trust agreement made by Henry Hallock on September 3, 1919, valued at \$70,720.00 as a transfer to take effect in possession or enjoyment at or after death under Sections 302 (c) and 302 (d) of the Revenue Act of 1926.

(2) The inclusion of the trust estate at its full value, without deducting the value of the life estate or interest in the trust of Anne Lamson Hallock, the life beneficiary of all of the income.

(3) The disallowance as deductions from the gross estate of debts and charges of \$56,551.81 on the ground that no greater amount may be allowed as deductions than the value of the probated estate administered by the executrix.

58 (4) The assessment against the petitioner, as trustee and transferee, of the entire alleged deficiency of Six Thousand Ninety-Six Dollars and Ninety-Seven Cents (\$6,096.97).

The respondent relies upon section 302 of the Revenue Act of 1926, and especially subsections (c) and (d).²

Subsection (c), supra, has been construed by the courts in many cases and it is unnecessary for us to discuss it at any considerable length. In the recent case of *Helvering v. St. Louis Union Trust Co.*, 296 U. S. 39, the Court collates the previous decisions and again enunciates the rule that "The event which gives rise to the tax is the death of the decedent, with the resulting transfer of his estate either by will or the law relating to intestacy." The tax is laid "upon the theory that such a transfer is in effect testamentary" but if "no interest in the property involved in a given case pass from the 'possession, enjoyment, or control of the donor at his death,' there is no interest with respect to which the decedent has created a trust intended to take effect in possession or enjoyment at or after his death." *Helvering v. St. Louis Union Trust Co.*, supra; *Becker v. St. Louis Union Trust Co.*, 296 U. S. 48, and cases cited.

In the instant case it cannot be said that the decedent had transferred his property "in contemplation of or intended to take effect in possession or enjoyment at or after his death." He divested himself of all title and ownership in the shares of stock when he conveyed them to the trustee. He retained "no power to resume

² 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. . . .

(d) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any chance through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. . . .

59 ownership, possession, or enjoyment except upon a contingency in the nature of a condition subsequent, the occurrence of which was entirely fortuitous so far as any control, design, or volition on his part was concerned." (*Helvering v. St. Louis Union Trust Co.*, supra.) The trust instrument provided that "If and when Anne Lamson Hallock shall die * * * the trust shall terminate." She is still alive, and the trust has not yet terminated. The only other provision of the trust instrument providing for the termination of the trust was "by the written assent of [Henry Hallock] and [his former wife] the beneficiary"; but such written assent was never given.

Here, as in the cases cited supra, the decedent had no right in the trust estate which was the subject of testamentary disposition. The trust instrument—and not the death or testament of the decedent—disposed of the corpus of the trust property. It directed that in the event of the death of the settlor—decedent—prior to the death of the beneficiary "payment and delivery over [of any accrued income and the principal of the trust fund] shall be made to Levitt Hallock and Helen Hallock, respectively son and daughter of the Party of the First Part [settlor], share and share alike." By the death of the settlor, who, under the trust instrument had the right to have delivery over of the trust property made to him upon the death of the beneficiary, the son and daughter became vested remaindermen, whereas their interest, prior to the death of their father, had been contingent. But such change is not, in our opinion, the "shifting of an economic benefit of property which is the subject of a death tax." We hold, therefore, that the trust property is not required to be included in the gross estate of the decedent under section 302 (c), supra.

Is section 302 (d) applicable? The trust instrument provides that the "trust may be terminated, modified, altered, canceled, or in any way varied by the written assent of the Party of the first part [settlor-decedent] and beneficiary."

Petitioners concede that, under *Helvering v. City Bank Farmers Trust Co.*, 296 U. S. 85, inasmuch as the settlor in conjunction with the beneficiary might revoke or terminate the trust, the property conveyed in trust, if such conveyance were made after the passage of the act, must needs be included in the estate of the settlor. But

60 is a different rule applicable where, as here, the property was conveyed before the effective date of the act? This question is answered by the Supreme Court in two recent cases—*Helvering v. Helmholz*, 296 U. S. 93, affirming the decision of the Court of Appeals for the District of Columbia (75 Fed. (2d) 245) which affirmed the decision of this Board in 28 B. T. A. 165, and *White v. Poor*, 296 U. S. 98.

In *Helvering v. Helmholtz*, supra, the Court said:

"Another and more serious objection to the application of section 302 (d) in the present instance is its retroactive operation. The transfer was complete at the time of the creation of the trust. There remained no interest in the grantor. She reserved no power in herself alone to revoke, to alter, or to amend. Under the revenue act then in force the transfer was not taxable as intended to take effect in possession or in enjoyment at her death." *Reinecke v. Northern Trust Company*, 278 U. S. 339. If section 302 (d) of the Act of 1926 could fairly be considered as intended to apply in the instant case its operation would violate the Fifth Amendment. *Nichols v. Coolidge*, 274 U. S. 531.

The above language is clearly applicable in its entirety to the facts of the instant case. It follows that we must hold that the trust property is not includable in the gross estate of the decedent under section 302 (d), supra. Respondent erred in including said property in the trust estate and his action in doing so is disapproved. Our holding upon this question makes it unnecessary to consider the second assignment of error urged by the petitioners.

There remains for our consideration the assignment of error relating to the disallowance by the respondent of deductions on account of debts and charges against the estate in the amount that such charges exceed "the probated estate which is subject to the payment of such items."

Section 303 of the Revenue Act of 1926, part of which is shown in the margin,¹ authorizes the deduction "to the extent . . . incurred or contracted bona fide and for adequate and full consideration in money or money's worth." It is stipulated that "The debts and deductions of \$171,378.17 claimed in the estate tax return filed by petitioners were incurred or contracted bona fide and for an adequate consideration in money or money's worth." The respondent directs our attention to no provision of the act limiting the deductions as he attempts to do in his notice of deficiency. The decisions of the courts and of this Board have uniformly permitted the deductions, on the theory that the statute governs and that the department is without power or authority to make a rule to the contrary. *Union Guardian Trust Co., Administrator*, 32 B. T. A. 996, and *Commissioner v. Strauss*, 77 Fed. (2d) 401. We hold that the respondent erred in reducing the deductions from \$171,378.17 to \$114,822.36.

The respondent erred in determining the deficiencies and his action in doing so is set aside.

Judgment will be entered for petitioners.

[SEAL]

¹ Sec. 303. For the purpose of the tax the value of the net estate shall be determined—
(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages upon, or any indebtedness in respect to, property (except in the case of a resident decedent, where such property is not situated in the United States), to the extent that such claims, mortgages, or indebtedness were incurred or contracted bona fide and for an adequate and full consideration in money or money's worth.

Before United States Board of Tax Appeals

Motion to vacate decision and for reconsideration—Nos. 76802, 76803, 76927

(Filed May 28, 1936)

Comes now the respondent, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, and moves that the decisions of the Board ordering no deficiency in estate tax in the above-entitled appeal, docket number 76803, entered May 21, 1936, and ordering no liability of the petitioners as transferees in the above-entitled appeals, docket numbers 76802 and 76927, entered May 21, 1936, pursuant to the Board's opinion promulgated May 19, 1936, be vacated and that the opinion of May 19, 1936, be reconsidered.

As grounds for this motion the respondent respectfully calls attention to an apparent conflict in the decision of the Division of the Board in this case with respect to one issue, and two previous decisions by other Divisions of the Board on the same question.

The question involved is whether certain property transferred by decedent by deed to a trustee was, as to the remainder, a transfer intended to take effect in possession or enjoyment at or after death, and so includable in his gross estate under Section 302 (c) of the Revenue Act of 1926. The same question on almost identical facts was considered by the Board in *Chemical Bank and Trust Company, et al., Executors v. Commissioner*, 25 B. T. A. 1153. There property was transferred by a deed to a trustee to pay the income therefrom to the grantor's estranged wife until her death or the prior termination of the Trust, and then to convey the property to the grantor, if then living, or, if not, to his children. The husband died before the wife and before the termination of the trust. In its opinion the Board said:

"The trust was for the purpose of paying income to the wife for life or until sooner terminated. It was not to continue after her death. Upon its termination the trustee was required to convey the remainder to the grantor, if living, or, if dead, to his children. The inclusion of this remainder in the decedent's gross estate need not depend upon section 302 (d). The transfer of the remainder to the children was one intended to take effect in possession or enjoyment at or after the grantor's death. It was contingent upon his dying before the trust terminated. It vested in the children at his death. His death was the indispensable and intended event which effected the transmission of the remainder from the dead (the husband) to the living (the children). The transfer of the remainder was not a sale for a full and adequate consideration in money or money's worth. The grantor could not sell to himself, and there was no consideration in money or money's worth for the transfer to the children. It was proper for the Commissioner to include the

63 value of this remainder in the decedent's gross estate under section 302 (c) of the Revenue Act of 1926."

The Board also held that the Commissioner did not err in including in the husband's gross estate the value of the entire property at the date of his death where the value of the interest of the wife at the date of the husband's death has not been shown. In the instant case the parties stipulated that the value of the trust estate at the date of the decedent's death was \$70,720.00; that on the date of death Anne Lamson Hallock, the decedent's divorced wife, was 63 years old, was still living, and had not remarried; that the fair value of the life estate of Anne Lamson Hallock at the date of death was \$25,743.00. Therefore, in this case, the value of the remainder would be the difference between the value of the entire trust and the value of the life estate, or \$44,977.00. Under the rule announced by the Board in the Chemical National Bank case, the value of the remainder should be included in the decedent's gross estate.

In a more recent decision promulgated December 20, 1935, after the instant case was submitted, Clarence H. Mackay, et al., Executors v. Commissioner, 33 B. T. A. No. 116, the Board held that as certain trusts could be revoked without the consent of the life tenants, the transfer of these estates was not complete until the death of the settlor, and that the value of the life estate should be included in the decedent's gross estate under Section 302 (c). In reaching this conclusion the Board relied on *Reinecke v. Northern Trust Company*, 278, U. S. 339, in which the Supreme Court construed a similar provision in the Revenue Act of 1921, and held that as to two of the trusts there involved, although created long before the passage of any statute imposing an estate tax, which is not the fact in the instant proceeding, the value of the corpus should be included in the gross estate. As to these trusts the settlor reserved a power of revocation. A transfer made subject to such a power in the transferor is not complete until his death. In the instant case the decedent held a power to revoke with the consent of the beneficiary, his wife, who was the life tenant. She had no interest in the remainder. Therefore, as to the remainder there was no adverse interest whose consent was required before revocation. The transfer of the remainder was not complete until the death of the settlor. By following the principle of the Board's decision in the Mackay case, the value of the remainder should be included in the decedent's gross estate.

In its opinion in the instant case the Board says:

"By the death of the settlor, who, under the trust had the right to have delivery over of the trust property made to him upon the death of the beneficiary, the son and daughter became vested remaindermen, whereas their interest, prior to the death of their father, had been contingent."

The Board then holds that the property is not required to be included in the gross estate under Section 302 (c) because "such change" is not the "shifting of an economic benefit of property which is the

subject of a death tax." This holding, the respondent respectfully submits, is directly contrary to that in the Chemical Bank case where the identical situation was presented and where the Board said:

"The transfer of the remainder to the children was one intended to take effect in possession or enjoyment at or after the grantor's death. It was contingent upon his dying before the trust terminated. It vested in the children at his death. His death was the indispensable and intended event which effected the transmission of the remainder from the dead (the husband) to the living (the children)."

The law taxes "the interest which ceased by reason of death." Knowlton v. Moore, 178 U. S. 41; Edwards v. Slocum, 264 U. S. 61. What the law taxes is not the property belonging to the decedent at his death, but the transmission of the property from the dead to the living. Saltonstall v. Saltonstall, 276 U. S. 260. These principles are recognized in Reinecke v. Northern Trust Company, supra, and in many decisions of the Board. Klein v. United States, 283 U. S. 232.

Wherefore, it is respectfully prayed that the respondent's motion be granted; that the Board vacate the decisions entered May 21, 1936; that the Board reconsider the opinion promulgated May 19, 1936 and that the opinion be modified to the extent of holding that the value of the remainder should be included in the decedent's gross estate as a transfer intended to take effect in possession or enjoyment at or after death, and that provision be made for entering decision under Rule 50.

(Signed) HERMAN OLIPHANT,
*General Counsel for the
Department of the Treasury.*

Of Counsel:

EUGENE G. SMITH,
*Special Attorney,
Bureau of Internal Revenue.*

Before United States Board of Tax Appeals

Order on motion to vacate decision, etc.—Nos. 76802, 76803, 76927

(Entered June 5, 1936)

The respondent having on May 28, 1936, filed a motion to vacate decision and for reconsideration, it is

Ordered that these proceedings be placed upon the day calendar of August 5, 1936, for hearing upon said motion before Division No. 11 of the Board; and, good cause therefor appearing, it is

Further ordered that the decision entered herein May 21, 1936, be and the same hereby is vacated and set aside.

[SEAL]

(Signed) ARTHUR J. MELLOTT,
Member.

Order and decision—No. 76802

(Entered August 10, 1936)

Subsequent to the promulgation of opinion herein on May 19, 1936, directing judgment for the petitioner, and subsequent to the entry of decision on May 21, 1936, the respondent, on May 28, 1936, filed a motion to vacate decision and for reconsideration. Good cause therefor appearing the said decision was, on June 5, 1936, vacated, and the motion with respect to reconsideration was set down for hearing on the day calendar of August 5, 1936.

On August 5, 1936, said motion was duly argued and considered by the presiding member, who thereupon ruled that said motion should be denied. Now, therefore, it is

Ordered that respondent's motion for reconsideration be and the same hereby is denied; and it is

Further ordered and decided: That there is no liability of the petitioners as transferees in respect of the tax of the Estate of Henry Hallock, Deceased.

[SEAL]

(Signed) ARTHUR J. MELLOTT,
Member.

Before United States Board of Tax Appeals

Order and decision—No. 76803

(Entered August 10, 1936)

Subsequent to the promulgation of opinion herein on May 19, 1936, directing judgment for the petitioner, and subsequent to the entry of decision on May 21, 1936, the respondent, on May 28, 1936, filed a motion to vacate decision and for reconsideration. Good cause therefor appearing the said decision was, on June 5, 1936, vacated, and the motion with respect to reconsideration was set down for hearing on the day calendar of August 5, 1936.

On August 5, 1936, said motion was duly argued and considered by the presiding member, who thereupon ruled that said motion should be denied. Now, therefore, it is

Ordered that respondent's motion for reconsideration be and the same hereby is denied; and it is

Further ordered and decided: that there is no deficiency in estate tax herein.

[SEAL]

(Signed) ARTHUR J. MELLOTT,
Member.

Before United States Board of Tax Appeals

Order and decision—No. 76927

(Entered August 10, 1936)

Subsequent to the promulgation of opinion herein on May 19, 1936, directing judgment for the petitioner, and subsequent to the entry of decision on May 21, 1936, the respondent, on May 28, 1936, filed a motion to vacate decision and for reconsideration. Good cause therefor appearing, the said decision was, on June 5, 1936, vacated, and the motion with respect to reconsideration was set down for hearing on the day calendar of August 5, 1936.

On August 5, 1936, said motion was duly argued and considered by the presiding member, who thereupon ruled that said motion should be denied. Now, therefore, it is

Ordered that respondent's motion for reconsideration be and the same hereby is denied; and it is

Further ordered and decided: That there is no liability of the petitioners as transferees in respect of the tax of the Estate of Henry Hallock, Deceased.

[SEAL]

(Signed) ARTHUR J. MELLOTT,
Member.

68

Before United States Board of Tax Appeals

Petition for review and assignments of error—No. 76802

(Filed October 28, 1936)

To the Honorable Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

Now comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Robert H. Jackson, Assistant Attorney General, Herman Oliphant, General Counsel for the Department of the Treasury, and Lewis S. Pendleton, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I

That the petitioner on review (hereinafter referred to as the Commissioner) is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States, appointed and holding office by virtue of the laws of the United States. The respondents on review (hereinafter referred to as the taxpayers) are trustees under a certain insurance trust agreement executed by Henry Hallock under

date of September 1, 1925. The residence of Mary Q. Hallock is 12349 Cedar Road, Cleveland Heights, Ohio, and the principal place of business of Central United National Bank of Cleveland is 308 Euclid Avenue, Cleveland, Ohio.

That the court in which the review of this proceeding is sought is the United States Circuit Court of Appeals for the Sixth Circuit.

II

The nature of the controversy is as follows, to wit:

Henry Hallock died on October 10, 1932, a resident of Cleveland, Ohio, and his surviving widow, Mary Q. Hallock, is the duly qualified and acting executrix of his estate. As such executrix, she filed the Federal Estate tax return for said estate in the office of the Collector of Internal Revenue at Cleveland, Ohio, showing no tax to be due. The Commissioner determined that 884 shares of 7% preferred stock of the Ohio Rubber Company valued at \$70,720.00 should have been included in the gross estate and also reduced the deductions on account of debts and charges against the estate from \$171,378.17, reported by the executrix, to \$114,822.36 on the theory that the deduction for debts should be limited to the value of the assets of the estate liable for the payment of such debts.

69 The facts with reference to the shares of stock of the Ohio Rubber Company are as follows:

On September 3, 1919, Henry Hallock entered into a separation agreement with his then wife, Anne Lamson Hallock, which provided for the payment to her of \$500.00 per month by way of alimony and for the creation of a trust to produce such sum. On the same day Henry Hallock transferred in trust to the First Trust and Savings Company of Cleveland, Ohio, 884 shares of 7% preferred stock of the Ohio Rubber Company. The dividends of such stock amounted to \$6,188.00 per annum, sufficient to pay the necessary \$6,000.00 per year to the beneficiary and leave sufficient for the expenses and compensation of the trustee. The Union Trust Company was the successor in trust of the First Trust and Savings Company and it is now in liquidation by S. H. Squire, Superintendent of Banks of the State of Ohio. Anne Lamson Hallock secured a divorce from Henry Hallock on October 28, 1919. She is still living and has not remarried. At the date of the decedent's death the value of the trust estate was \$70,720.00. On the date of the decedent's death, Anne Lamson Hallock, the decedent's divorced wife, was sixty-three years old. The fair value of the life estate of Anne Lamson Hallock at the date of the decedent's death was \$25,743.00, and the value of the remainder was \$44,977.00. The trust agreement contained the following provisions:

"C. If and when Anne Lamson Hallock shall die then and in such event and thereupon the within trust shall terminate and said Trustee

shall and will pay Party of the First Part if he then be living any accrued income, then remaining in said trust fund and shall and will deliver forthwith to Party of the First Part, the principal of the said trust fund. If and in the event said Party of the First Part shall not be living then and in such event payment and delivery over shall be made to Levitt Hallock and Helen Hallock, respectively, son and daughter of the Party of the First Part, share and share alike. If and in the event either said Levitt Hallock or Helen Hallock shall at such time be dead, the share which would have gone to him or her if living, shall go to the children of such deceased child and if there be no such children living, then said entire income 70 and principal shall be paid to that child of Henry Hallock then living.

"This trust may be terminated, modified, altered, canceled, or in any way varied by the written assent of the Party of the First Part and beneficiary."

The Commissioner concluded that the transfer of the trust estate came within the purview of Section 302 (c) and (d) of the Revenue Act of 1926 and included the value of the corpus amounting to \$70,720.00 in the gross estate.

The taxpayer claimed deduction for debts and charges against the estate in the amount of \$171,378.17, the full amount of the debts due. The Commissioner limited the deduction for debts of decedent to the amount of \$114,822.36, said amount being the value of the assets of the estate liable for the payment of such debts. These changes resulted in the determination of the deficiency of \$6,096.97. The taxpayer filed a petition for redetermination with the United States Board of Tax Appeals and in due course a hearing was had. On May 19, 1936, the Board promulgated its opinion holding that the value of the trust property should not be included in the gross estate of the decedent under Section 302 (c) or section 302 (d), and that the deduction allowable to the estate for debts due by the decedent is not limited to the value of the assets of the estate liable for the payment of such debts, and on May 21, 1936, entered its final order determining that there is no deficiency in estate tax.

On May 28, 1936, the Commissioner filed a motion to vacate the decision and for reconsideration. On June 5, 1936, the Board entered an order vacating its decision entered on May 21, 1936, and placed the case on the day calendar of August 5, 1936, for hearing on said motion. The Commissioner's motion for reconsideration was based on the theory that the property transferred by the decedent was as to the remainder a transfer intended to take effect in possession or enjoyment at or after death and so includible in his gross estate under Section 302 (c) and that the holding of the Board that the property is not required to be included in the gross estate under Section 302 (c) because "such change is not, in our opinion, the

'shifting of an economic benefit of property which is the subject of a death tax' is contrary to previous decisions of the Board on the same question. On August 5, 1936, the said motion was
71 duly argued and considered and on August 10, 1936, the Board denied the Commissioner's motion and entered its final order that there is no deficiency in estate tax.

On or about September 1, 1925, the decedent transferred to the taxpayers as trustees under an agreement of trust dated September 1, 1925, insurance policies taken out on his own life having an aggregate face value of approximately \$200,000.00. Upon the death of the decedent the proceeds of said policies were paid to petitioners as trustees aforesaid and at the time of decedent's death the value of the insurance held by said trustees under said insurance trust agreement was approximately \$110,000.00, and the proceeds or investments of the proceeds now in the hands of the insurance trustees exceed in amount the deficiency determined by the Commissioner as set forth in the deficiency notice dated May 22, 1934. The said insurance passed under contracts executed by the decedent in favor of specific beneficiaries, the taxpayers herein, and the Commissioner has proposed for assessment the deficiency herein pursuant to Sections 315 (b) and 316 of the Revenue Act of 1926. The following is found in the Board's opinion:

"* * * No issue is involved herein relative to such transfer, but it is stipulated that the proceeds, or the investment of the proceeds in the hands of the trustee, exceed in amount the deficiency determined by the respondent. Thus, if the deficiency is upheld, such petitioners are liable for the tax as transferees."

III

The Commissioner's assignments of error are as follows:

1. The Board of Tax Appeals erred in holding that the value of the remainder interest should not be included in the gross estate under the provisions of Section 302 (c) and (d) of the Revenue Act of 1926.

2. The Board of Tax Appeals erred in failing to hold that the value of the remainder should be included in the gross estate under the provisions of Section 302 (c) and (d) of the Revenue Act of 1926.

3. The Board of Tax Appeals erred in holding that the estate is entitled to deduction of the total debts due.

72 4. The Board of Tax Appeals erred in failing to hold that the deduction for debts of decedent is limited to the value of the assets of the estate liable for the payment of such debts.

5. The Board of Tax Appeals erred in determining that there is no deficiency in estate tax due from the taxpayer.

6. The Board of Tax Appeals erred in failing to determine that there is a deficiency in estate tax due from the taxpayer in the amount of \$4,051.19.

IV

The Commissioner being aggrieved by the conclusions of law contained in said decision, and by the said order of redetermination desires to obtain a review thereof by the United States Circuit Court of Appeals for the Sixth Circuit.

Wherefore, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Sixth Circuit, that a transcript of record be prepared in accordance with law and the rules of said court and transmitted to the clerk of said court for filing and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

(Signed) ROBERT H. JACKSON,
Assistant Attorney General,

(Signed) HERMAN OLIPHANT,
General Counsel for the Department of the Treasury.

Of Counsel:

EUGENE G. SMITH,
Special Attorney,
Bureau of Internal Revenue.

73 [Duly sworn to by Lewis S. Pendleton; jurat omitted in printing.]

Before United States Board of Tax Appeals

Notice of filing petition for review—No. 76802

• (Filed November 4, 1936)

To CENTRAL UNITED NATIONAL BANK OF CLEVELAND,

308 Euclid Avenue, Cleveland, Ohio.

You are hereby notified that the Commissioner of Internal Revenue did, on the 28th day of October 1936 file with the clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

(Signed) HERMAN OLIPHANT,
General Counsel
for the Department of the Treasury.

74 Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 29th day of October 1936.

(Signed) W. E. CALDWELL, Jr.,
Respondent on Review.

GUY T. HELVERING VS. MARY Q. HALLOCK

Before United States Board of Tax Appeals

Notice of filing petition for review—No. 76802

(Filed November 4, 1936)

To WALKER H. NYE, Esq.,

2800 Terminal Tower, Cleveland, Ohio.

You are hereby notified that the Commissioner of Internal Revenue did, on the 28th day of October 1936, file with the clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

(Signed) HERMAN OLIPHANT,-----

*General Counsel**for the Department of the Treasury.*

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 29th day of October 1936.

(Signed) WALKER H. NYE,

Attorney for Respondent on Review.

75

Before United States Board of Tax Appeals

Notice of filing petition for review—No. 76802

(Filed November 4, 1936)

To MARY Q. HALLOCK,

12349 Cedar Road, Cleveland Heights, Ohio.

You are hereby notified that the Commissioner of Internal Revenue did on the 28th day of October 1936, file with the clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

(Signed) HERMAN OLIPHANT,

*General Counsel**for the Department of the Treasury.*

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 29th day of October 1936.

(Signed) MARY Q. HALLOCK,

Respondent on Review.

76 Before United States Board of Tax Appeals

Petition for review and assignments of error—No. 76803

(Filed October 28, 1936)

To the Honorable Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

Now comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Robert H. Jackson, Assistant Attorney General, Herman Oliphant, General Counsel for the Department of the Treasury, and Lewis S. Pendleton, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I

That the petitioner on review (hereinafter referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, appointed and holding office by virtue of the laws of the United States. The respondent on review (hereinafter referred to as the taxpayer) is the duly appointed, qualified, and acting executrix of the Estate of Henry Hallock, Deceased, and as such executrix filed the Federal estate tax return for said estate in the office of the Collector of Internal Revenue for the Eighteenth District of Ohio at Cleveland, Ohio.

That the court in which the review of this proceeding is sought is the United States Circuit Court of Appeals for the Sixth Circuit.

II

The nature of the controversy is as follows, to-wit:

Henry Hallock died on October 10, 1932, a resident of Cleveland, Ohio, and his surviving widow, Mary Q. Hallock, is the duly qualified and acting executrix of his estate. She filed an estate tax return showing no tax to be due. The Commissioner determined that 884 shares of 7% preferred stock of the Ohio Rubber Company valued at \$70,720.00 should have been included in the gross estate and also reduced the deductions on account of debts and charges against the estate from \$171,378.17, reported by the executrix, to \$114,822.36 on the theory that the deduction for debts should be limited to the value of the assets of the estate liable for the payment of such debts.

7 The facts with reference to the shares of stock of the Ohio Rubber Company are as follows:

On September 3, 1919, Henry Hallock entered into a separation agreement with his then wife, Anne Lamson Hallock, which provided for the payment to her of \$500.00 per month by way of alimony and for the creation of a trust to produce such sum. On the same day Henry Hallock transferred in trust to the First Trust and Savings

Company of Cleveland, Ohio, 884 shares of 7% preferred stock of the Ohio Rubber Company. The dividends of such stock amounted to \$6,188.00 per annum, sufficient to pay the necessary \$6,000.00 per year to the beneficiary and leave sufficient for the expenses and compensation of the trustee. The Union Trust Company was the successor in trust of the First Trust and Savings Company and it is now in liquidation by S. H. Squire, Superintendent of Banks of the State of Ohio. Anne Lamson Hallock secured a divorce from Henry Hallock on October 28, 1919. She is still living and has not remarried. At the date of the decedent's death the value of the trust estate was \$70,720.00. On the date of the decedent's death, Anne Lamson Hallock, the decedent's divorced wife, was sixty-three years old. The fair value of the life estate of Anne Lamson Hallock at the date of the decedent's death was \$25,743.00, and the value of the remainder was \$44,977.00. The trust agreement contained the following provisions:

"C. If and when Anne Lamson Hallock shall die then and in such event and thereupon the within trust shall terminate and said Trustee shall and will pay Party of the First Part if he then be living any accrued income, then remaining in said trust fund and shall and will deliver forthwith to Party of the First Part, the principal of the said trust fund. If and in the event said Party of the First Part shall not be living then and in such event payment and delivery over shall be made to Levitt Hallock and Helen Hallock, respectively, son and daughter of the Party of the First Part, share and share alike. If and in the event either said Levitt Hallock or Helen Hallock shall at such time be dead, the share which would have gone to him or her if living, shall go to the children of such deceased child and if there be no such children living, then said
78 entire income and principal shall be paid to that child of Henry Hallock then living.

"This trust may be terminated, modified, altered, canceled or in any way varied by the written assent of the Party of the First Part and beneficiary."

The Commissioner concluded that the transfer of the trust estate came within the purview of Section 302 (c) and (d) of the Revenue Act of 1926 and included the value of the corpus amounting to \$70,720.00 in the gross estate.

The taxpayer claimed deduction for debts and charges against the estate in the amount of \$171,378.17, the full amount of the debts due. The Commissioner limited the deduction for debts of decedent to the amount of \$114,822.36, said amount being the value of the assets of the estate liable for the payment of such debts. These changes resulted in the determination of the deficiency of \$6,096.97. The taxpayer filed a petition for redetermination with the United States Board of Tax Appeals and in due course a hearing was had. On May 19, 1936, the Board promulgated its opinion holding that the value of the trust property should not be included in the gross

ate of the decedent under Section 302 (c) or Section 302 (d), and at the deduction allowable to the estate for debts due by the decedent is not limited to the value of the assets of the estate liable for the payment of such debts, and on May 21, 1936, entered its final order determining that there is no deficiency in estate tax.

On May 28, 1936, the Commissioner filed a motion to vacate the decision and for reconsideration. On June 5, 1936, the Board entered an order vacating its decision entered on May 21, 1936, and placed the case on the day calendar of August 5, 1936, for hearing said motion. The Commissioner's motion for reconsideration was based on the theory that the property transferred by the decedent as to the remainder a transfer intended to take effect in possession or enjoyment at or after death and so includible in his gross estate under Section 302 (c) and that the holding of the Board that the property is not required to be included in the gross estate under Section 302 (c) because "such change is not, in our opinion, the shifting of an economic benefit of property which is the subject of death tax" is contrary to previous decisions of the Board on the same question. On August 5, 1936, the said motion was duly argued and considered and on August 10, 1936, the Board denied the Commissioner's motion and entered its final order that there is no deficiency in estate tax.

III


The Commissioner's assignments of error are as follows:

1. The Board of Tax Appeals erred in holding that the value of the remainder interest should not be included in the gross estate under the provisions of Section 302 (c) and (d) of the Revenue Act of 1926.
2. The Board of Tax Appeals erred in failing to hold that the value of the remainder should be included in the gross estate under the provisions of Section 302 (c) and (d) of the Revenue Act of 1926.
3. The Board of Tax Appeals erred in holding that the estate is entitled to deduction of the total debts due.
4. The Board of Tax Appeals erred in failing to hold that the deduction for debts of decedent is limited to the value of the assets of the estate liable for the payment of such debts.
5. The Board of Tax Appeals erred in determining that there is no deficiency in estate tax due from the taxpayer.
6. The Board of Tax Appeals erred in failing to determine that there is a deficiency in estate tax due from the taxpayer in the amount \$4,051.19.

IV

The Commissioner being aggrieved by the conclusions of law contained in said decision and by the said order of redetermination desires to obtain a review thereof by the United States Circuit Court of Appeals for the Sixth Circuit.

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Wherefore, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Sixth Circuit, that a transcript of record be prepared in accordance with law and the rules of said court and transmitted to the clerk of said court for filing and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

(Signed) ROBERT H. JACKSON,
Assistant Attorney General.

(Signed) HERMAN OLIPHANT,
General Counsel
for the Department of the Treasury.

Of Counsel:

EUGENE G. SMITH,
Special Attorney,
Bureau of Internal Revenue.

[*Duly sworn to by Lewis A. Pendleton, jurat omitted in printing.*]

81. Before United States Board of Tax Appeals

Notice of filing petition for review—No. 76803

(Filed November 4, 1936)

To WALKER H. NYE,

2800 Terminal Tower, Cleveland, Ohio.

You are hereby notified that the Commissioner of Internal Revenue did, on the 28th day of October 1936, file with the clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

(Signed) HERMAN OLIPHANT,
General Counsel
for the Department of the Treasury.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 29th day of October 1936.

(Signed) WALKER H. NYE,
Attorney for Respondent on Review.

Before United States Board of Tax Appeals

Notice of filing petition for review—No. 76803

(Filed November 4, 1936)

To MARY Q. HALLOCK, *Executrix*,
12349 Cedar Road, Cleveland Heights, Ohio.

You are hereby notified that the Commissioner of Internal Revenue did, on the 28th day of October 1936, file with the clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

(Signed) HERMAN OLIPHANT,
General Counsel
for the Department of the Treasury.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 29th day of October 1936.

(Signed) MARY Q. HALLOCK,
Executrix,
Respondent on Review.

Before United States Board of Tax Appeals

Petition for review and assignments of error—No. 76927

(Filed October 28, 1936)

To the Honorable Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

Now comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Robert H. Jackson, Assistant Attorney General, Herman Oliphant, General Counsel for the Department of the Treasury, and Lewis S. Pendleton, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I

That the petitioner on review (hereinafter referred to as the Commissioner) is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States, appointed and holding

office by virtue of the laws of the United States. The respondent on review (hereinafter referred to as the taxpayer) is the duly appointed, qualified, and acting Superintendent of Banks of the State of Ohio, and as such is in charge of the liquidation of the Union Trust Company, successor of the First Trust and Savings Company, which was and is trustee under a certain trust agreement executed by Henry Hallock and his then wife, Anne Lamson Hallock, and the First Trust and Savings Bank of Cleveland, on September 3, 1919. The principal place of business of Union Trust Company is Union Trust Building, Cleveland, Ohio.

That the court in which the review of this proceeding is sought is the United States Circuit Court of Appeals for the Sixth Circuit.

II.

The nature of the controversy is as follows, to-wit:

Henry Hallock died on October 10, 1932, a resident of Cleveland, Ohio, and his surviving widow, Mary Q. Hallock, is the duly qualified and acting executrix of his estate. As such executrix, she filed the Federal Estate tax return for said estate in the office of the Collector of Internal Revenue at Cleveland, Ohio, showing no tax to be due. The Commissioner determined that 884 shares of 7% preferred stock of the Ohio Rubber Company valued at \$70,720.00 should have been included in the gross estate and also reduced the 84 deductions on account of debts and charges against the estate from \$171,378.17, reported by the executrix, to \$114,822.36 on the theory that the deduction for debts should be limited to the value of the assets of the estate liable for the payment of such debts.

The facts with reference to the shares of stock of the Ohio Rubber Company are as follows:

On September 3, 1919, Henry Hallock entered into a separation agreement with his then wife, Anne Lamson Hallock, which provided for the payment to her of \$500.00 per month by way of alimony and for the creation of a trust to produce such sum. On the same day Henry Hallock transferred in trust to the First Trust and Savings Company of Cleveland, Ohio, 884 shares of 7% preferred stock of the Ohio Rubber Company. The dividends of such stock amounted to \$6,188.00 per annum, sufficient to pay the necessary \$6,000.00 per year to the beneficiary and leave sufficient for the expenses and compensation of the trustee. The Union Trust Company was the successor in trust of the First Trust and Savings Company and it is now in liquidation by the taxpayer, S. H. Squire, Superintendent of Banks of the State of Ohio. Anne Lamson Hallock secured a divorce from Henry Hallock on October 28, 1919. She is still living and has not remarried. At the date of the decedent's death the value of the trust estate was \$70,720.00. On the date of the decedent's death, Anne Lamson Hallock, the decedent's divorced wife, was sixty-three years old. The fair value of the life estate of Anne Lamson Hallock at the date of the decedent's death was \$25,743.00, and the value of

the remainder was \$44,977.00. The trust agreement contained the following provisions:

"C. If and when Anne Lamson Hallock shall die then and in such event and thereupon the within trust shall terminate and said Trustee shall and will pay Party of the First Part if he then be living any accrued income, then remaining in said trust fund and shall and will deliver forthwith to Party of the First Part, the principal of the said trust fund. If and in the event said Party of the First Part shall not be living then and in such event payment and delivery over shall be made to Levitt Hallock and Helen Hallock, respectively, son and daughter of the Party of the First Part, share and share alike. If

85 and in the event either said Levitt Hallock or Helen Hallock shall at such time be dead, the share which would have gone to him or her if living, shall go to the children of such deceased child and if there be no such children living, then said entire income and principal shall be paid to that child of Henry Hallock then living.

"This trust may be terminated, modified, altered, canceled, or in any way varied by the written assent of the Party of the First Part and beneficiary."

The Commissioner concluded that the transfer of the trust estate came within the purview of Section 302 (c) and (d) of the Revenue Act of 1926 and included the value of the corpus amounting to \$70,720.00 in the gross estate.

The taxpayer claimed deduction for debts and charges against the estate in the amount of \$171,378.17, the full amount of the debts due. The Commissioner limited the deduction for debts of decedent to the amount of \$114,822.36, said amount being the value of the assets of the estate liable for the payment of such debts. These changes resulted in the determination of the deficiency of \$6,096.97. The taxpayer filed a petition for redetermination with the United States Board of Tax Appeals and in due course a hearing was had. On May 19, 1936, the Board promulgated its opinion holding that the value of the trust property should not be included in the gross estate of the decedent under Section 302 (c) or Section 302 (d), and that the deduction allowable to the estate for debts due by the decedent is not limited to the value of the assets of the estate liable for the payment of such debts, and on May 21, 1936, entered its final order determining that there is no deficiency in estate tax.

On May 28, 1936, the Commissioner filed a motion to vacate the decision and for reconsideration. On June 5, 1936, the Board entered an order vacating its decision entered on May 21, 1936, and placed the case on the day calendar of August 5, 1936, for hearing on said motion. The Commissioner's motion for reconsideration was based on the theory that the property transferred by the decedent was as to the remainder a transfer intended to take effect in possession or enjoyment at or after death and so includible in his gross estate under Section 302, (c) and that the holding of the Board that the property is not required to be included in the gross estate

86 under Section 302 (c) because "such change is not, in our opinion, the 'shifting of an economic benefit' of property which is the subject of a death tax" is contrary to previous decisions of the Board on the same question. On August 5, 1936, the said motion was duly argued and considered and on August 16, 1936, the Board denied the Commissioner's motion and entered its final order that there is no deficiency in estate tax.

At the time of the decedent's death his estate was and is now insolvent. On or about September 3, 1919, the decedent created a revocable trust naming the first Trust and Savings Company of Cleveland, Ohio, as trustee and transferred to the taxpayer as trustee certain securities of the value as of the date of death of \$70,720.00. Upon the decedent's death the securities representing the corpus of said trust estate were in the hands of the taxpayer and the corpus of said trust is now in the hands of the taxpayer in an amount in excess of the deficiency determined by the Commissioner in the notice of deficiency dated May 22, 1934. That, because of the aforesaid transfer of assets the respondent concluded that the taxpayer is a trustee and transferee within the purview of Sections 315 (b) and 316 of the Revenue Act of 1926 and is liable in this proceeding as such.

III

The Commissioner's assignments of error are as follows:

1. The Board of Tax Appeals erred in holding that the value of the remainder interest should not be included in the gross estate under the provisions of Section 302 (c) and (d) of the Revenue Act of 1926.

2. The Board of Tax Appeals erred in failing to hold that the value of the remainder should be included in the gross estate under the provisions of Section 302 (c) and (d) of the Revenue Act of 1926.

3. The Board of Tax Appeals erred in holding that the estate is entitled to deduction of the total debts due.

4. The Board of Tax Appeals erred in failing to hold that the deduction for debts of decedent is limited to the value of the assets of the estate liable for the payment of such debts.

5. The Board of Tax Appeals erred in determining that there is no deficiency in estate tax due from the taxpayer.

87 6. The Board of Tax Appeals erred in failing to determine that there is a deficiency in estate tax due from the taxpayer in the amount of \$4,051.19.

IV

The Commissioner, being aggrieved by the conclusions of law contained in said decision and by the said order of redetermination, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Sixth Circuit.

Wherefore, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Sixth Circuit, that a transcript of record be prepared in accordance with law and the rules of said court and transmitted to the clerk of said court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

(Signed) ROBERT H. JACKSON,
Assistant Attorney General.

(Signed) HERMAN OLIPHANT,
General Counsel
for the Department of the Treasury.

Of Counsel:

EUGENE G. SMITH,
Special Attorney,
Bureau of Internal Revenue.

[*Duly sworn to by Lewis S. Pendleton; jurat omitted in printing.*]

88

Before United States Board of Tax Appeals

Notice of filing petition for review—No. 76927

(Filed November 4, 1936)

To S. H. SQUIRE,

Superintendent of Banks of the State of Ohio,
Union Trust Building, Cleveland, Ohio.

You are hereby notified that the Commissioner of Internal Revenue did, on the 28th day of October 1936, file with the clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

(Signed) HERMAN OLIPHANT,
General Counsel
for the Department of the Treasury.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 30th day of October 1936.

(Signed) S. H. SQUIRE,

(Signed) OSCAR L. COX,

(Signed) W. H. ANNAT,

Respondent on Review.

Notice of filing petition for review—No. 76927

(Filed November 4, 1936)

To W. H. ANNAT, Esq.,

1568 Union Trust Building, Cleveland, Ohio.

You are hereby notified that the Commissioner of Internal Revenue did, on the 28th day of October 1936, file with the clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

(Signed) HERMAN OLMPHANT,

General Counsel
for the Department of the Treasury.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 29th day of October 1936.

(Signed) W. H. ANNAT,

Attorney for Respondent on Review.

Praecipe for record

(Filed February 26, 1937)

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit, and deliver to the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, copies duly certified as correct of the following documents and records, in the above-entitled cases in connection with the petitions for review by said Circuit Court of Appeals for the Sixth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries before the Board in each case.
2. Pleadings before the Board—

- (a) Petition, including annexed copy of deficiency notice in each case.
- (b) Answer in each case.
- (c) Amended answer in Docket Nos. 76802 and 76927.
- (d) Reply in Docket Nos. 76802 and 76927.

3. Stipulation of facts filed December 12, 1935, in each case.
4. Opinion of the Board.
5. Motion to Vacate Decision and for Reconsideration.

6. Order dated June 5, 1936.
7. Order and Decision dated August 10, 1936.
8. Petitions for Review and Assignments of Error.
9. This praecipe.

(Signed) MORRISON SHAFROTH,
Chief Counsel,
Bureau of Internal Revenue.

Service of a copy of the within praecipe is hereby admitted this 13th day of February 1937.

(Signed) WALKER H. NYE,
Attorney for Respondent on Review.

(Signed) W. H. ANNAT,
Attorney for Respondent on Review.

91 [Clerk's certificate to foregoing transcript omitted in printing.]

Before United States Board of Tax Appeals

Order enlarging time—No. 76802

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Sixth Circuit, be and it is hereby extended to January 27, 1937.

(Signed) EUGENE BLACK, *Member.*

Dated Washington, D. C., Dec. 11, 1936.

Now, March 12, 1937, the foregoing order enlarging time certified from the record as a true copy.

[SEAL]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

92 Before United States Board of Tax Appeals

Order enlarging time—No. 76802

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Sixth Circuit, be and it is hereby extended to February 27, 1937.

(Signed) EUGENE BLACK, *Member.*

Dated Washington, D. C., Jan. 15, 1937.

Now, March 12, 1937, the foregoing order enlarging time certified from the record as a true copy.

[SEAL]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

Before United States Board of Tax Appeals

Order enlarging time—No. 76802

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Sixth Circuit, be and it is hereby extended to March 15, 1937.

(Signed) EUGENE BLACK, *Member.*

Dated Washington, D. C., Feb. 18, 1937.

Now, March 12, 1937, the foregoing order enlarging time certified from the record as a true copy.

[SEAL]

B. D. GAMBLE,

Clerk, U. S. Board of Tax Appeals.

Before United States Board of Tax Appeals

Order enlarging time—No. 76803

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Sixth Circuit, be and it is hereby extended to January 27, 1937.

(Signed) EUGENE BLACK, *Member.*

Dated Washington, D. C., Dec. 11, 1936.

Now, March 12, 1937, the foregoing order enlarging time certified from the record as a true copy.

[SEAL]

B. D. GAMBLE,

Clerk, U. S. Board of Tax Appeals.

Before United States Board of Tax Appeals

Order enlarging time—No. 76803

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Sixth Circuit, be and it is hereby extended to February 27, 1937.

(Signed) EUGENE BLACK, *Member.*

Dated Washington, D. C., Jan. 15, 1937.

Now, March 12, 1937, the foregoing order enlarging time certified from the record as the true copy.

[SEAL]

B. D. GAMBLE,

Clerk, U. S. Board of Tax Appeals.

94

Before United States Board of Tax Appeals

Order enlarging time—No. 76803

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record *sur* petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Sixth Circuit, be and it is hereby extended to March 15, 1937.

(Signed) EUGENE BLACK, *Member.*

Dated Washington, D. C., Feb. 18, 1937.

Now, March 12, 1937, the foregoing order enlarging time certified from the record as a true copy.

[SEAL]

B. D. GAMBLE,

Clerk, U. S. Board of Tax Appeals.

Before United States Board of Tax Appeals

Order enlarging time—No. 76927

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record *sur* petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Sixth Circuit, be and it is hereby extended to January 27, 1937.

(Signed) EUGENE BLACK, *Member.*

Dated Washington, D. C., Dec. 11, 1936.

Now, March 12, 1937, the foregoing order enlarging time certified from the record as a true copy.

[SEAL]

B. D. GAMBLE,

Clerk, U. S. Board of Tax Appeals.

95

Before United States Board of Tax Appeals

Order enlarging time—No. 76927

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record *sur* petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Sixth Circuit, be and it is hereby extended to February 27, 1937.

(Signed) EUGENE BLACK, *Member.*

Dated Washington, D. C., Jan. 15, 1937.

Now, March 12, 1937, the foregoing order enlarging time certified from the record as a true copy.

[SEAL]

B. D. GAMBLE,

Clerk, U. S. Board of Tax Appeals.

GUY T. HELVERING VS. MARY Q. HALLOCK
Before United States Board of Tax Appeals

Order enlarging time—No. 76927

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record *sur* petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Sixth Circuit, be and it is hereby extended to March 15, 1937.

(Signed) EUGENE BLACK, Member.

Dated Washington, D. C., Feb. 18, 1937.

Now, March 12, 1937, the foregoing order enlarging time certified from the record as a true copy.

[SEAL]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

96 In United States Circuit Court of Appeals for the Sixth
Circuit

[Title omitted.]

Docket No. 76802

Docket No. 76803

Docket No. 76927

Motion to consolidate causes

Now comes the Commissioner of Internal Revenue, petitioner on review in the above-entitled causes by and through his attorneys, James W. Morris, Assistant Attorney General, and Morrison Shafroth, Chief Counsel for the Bureau of Internal Revenue, and moves the Court to pass an order herein that the three causes appearing in the caption hereof be consolidated for the purpose of
97 record, briefing, hearing, argument, and decision and directing the Clerk of this Court to have a single transcript of record printed for all of the said causes and as grounds therefor respectfully represents:

1. That the sole question at issue in all of these causes is the liability of respondents herein for the payment of an estate tax as determined by the Commissioner of Internal Revenue upon the transfer of the net estate of Henry Hallock, deceased.

2. That the essential facts controlling the liability for the tax are the same in each cause.

3. That all the causes set forth in the caption hereof were consolidated for hearing before the United States Board of Tax Appeals and were so heard upon a single record.

4. That the respondents in Docket No. 76802 are trustees under an agreement of trust dated September 1, 1925, to whom the decedent had transferred certain policies of life insurance taken out on his own life. The proceeds of said policies, or the investments of the proceeds now in the hands of the trustees, exceed in amount the deficiency determined by the Commissioner.

5. That the printing of a single transcript of record herein will substantially reduce the cost, will conserve the time of the court and counsel for the parties, and will result in presenting to the court a single record for all of the said causes.

6. That the parties hereto appearing by their respective counsel of record have heretofore stipulated, subject to the approval of this Court, that the review by this Court of the causes appearing in the caption hereof may be had in manner and form as herein moved as is evidenced by stipulation attached hereto and forming a part of this motion.

(Signed) JAMES W. MORRIS,
Assistant Attorney General,

(Signed) MORRISON SHAFROTH,
*Chief Counsel,
Bureau of Internal Revenue.*

98 In United States Circuit Court of Appeals for the Sixth
Circuit

[Title omitted.]

Docket No. 76802

Docket No. 76803

Docket, No. 76927

Stipulation to consolidate causes

Now come the parties hereto by their respective counsel of record and subject to the approval of the United States Circuit Court of Appeals for the Sixth Judicial Circuit, stipulate and agree as follows:

That the Federal estate tax liability of the Estate of Henry Hallock as determined by the Commissioner of Internal Revenue is involved in each of the above causes;

99 That the essential facts controlling the liability for the tax are the same in each cause;

That the respondents in Docket No. 76802 are trustees under an agreement of trust dated September 1, 1925, to whom the decedent had transferred certain policies of life insurance taken out on his own life. The proceeds of said policies or the investments of the

proceeds now in the hands of the trustees exceed in amount the deficiency determined by the Commissioner;

That in order to reduce the cost of printing the record herein and to enable the parties to present to the court one printed record, the three causes appearing in the caption hereof be consolidated for the purpose of record, briefing, hearing, argument, and decision in the United States Circuit Court of Appeals.

That a single transcript of record shall be printed for all of the said causes and that said record shall contain the following:

1. The docket entries before the Board in each cause.
2. The pleadings before the Board in each cause.
3. Stipulation of facts filed December 12, 1935, in each cause.
4. Opinion of the Board.
5. Motion to vacate decision and for reconsideration.
6. Order dated June 5, 1936.
7. Order and decision dated August 10, 1936.
8. Petition for review and assignments of error in each cause.
9. This stipulation.
10. Praecipe for Record.

W. H. ANNAT,
Counsel for Respondent.
WALKER H. NYE,
Counsel for Respondents.
MORRISON SHAFROTH,
Chief Counsel,
Bureau of Internal Revenue.

Approved:

XEN HICKS, *Circuit Judge.*

**PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT**

Causes Argued and Submitted Dec. 13, 1938

Before HICKS, ALLEN, and HAMILTON, J. J.

These causes are argued by Helen R. Carlos for Commissioner of Internal Revenue, and by W. H. Nye and W. H. Annat for Respondents, and are submitted to the Court.

Decree No. 7666

Entered March 13, 1939

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court that the order or decree of the said Board of Tax Appeals in this cause be and the same is hereby affirmed.

Decree No. 7667

Entered March 13, 1939

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court that the order or decree of the said Board of Tax Appeals in this cause be and the same is hereby affirmed.

Decree No. 7668

Entered March 13, 1939

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court that the order or decree of the said Board of Tax Appeals in this cause be, and the same is hereby, affirmed.

United States Circuit Court of Appeals, Sixth Circuit

Nos. 7666, 7667, 7668

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

MARY Q. HALLOCK AND CENTRAL UNITED NATIONAL BANK OF CLEVELAND, TRUSTEE, RESPONDENTS

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

MARY Q. HALLOCK, EXECUTRIX, ESTATE OF HENRY HALLOCK,
DECEASED, RESPONDENT

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

S. H. SQUIRE, SUPERINTENDENT OF BANKS OF THE STATE OF OHIO IN
CHARGE OF LIQUIDATION OF THE UNION TRUST COMPANY, SUCCESSOR
OF THE FIRST TRUST & SAVINGS COMPANY, TRUSTEE, CLEVELAND,
OHIO, RESPONDENTOn Petition to Review Decisions of the United States Board of
Tax Appeals

Decided March 13, 1939

Before HICKS, ALLEN, and HAMILTON, Circuit Judges

HAMILTON, Circuit Judge. Petitions by the Commissioner of Internal Revenue to review orders of the United States Board of Tax Appeals redetermining and disallowing estate taxes of \$6,096.97 against the estate of Henry Hallock, deceased, No. 7667, and disallowing a transferee tax for the same amount of the respondents in Nos. 7666 and 7668 as transferees of the estate (34 B. T. A. 375).

The questions for decision are (1) whether, under Section 302 (c) of the Revenue Act of 1926 as amended (U. S. C. A., Title 26, Section 411 (c), c. 27, 44 Stat. 9), the value of the remainder interest in a trust estate created by the decedent should be included in his gross estate; (2) whether, under Section 303 of the Revenue Act of 1926 as amended (U. S. C. A., Title 26, Section 412, 47 Stat. 278), there may be deducted from the gross estate as deductions, debts of the estate in excess of the value of its assets which are administered by the executrix under the jurisdiction of the Probate Court.

Henry Hallock died October 10, 1932, testate. His widow, Mary Q. Hallock, respondent, was duly appointed and qualified as executrix of his estate and she filed a non-taxable estate tax return.

On September 3, 1919, Henry Hallock entered into a separation agreement with his then wife, Anne Lamson Hallock, whereby he agreed to pay her during her lifetime \$500.00 per month and, to guarantee the payment of this sum, on the same day transferred in trust to the First Trust & Savings Company of Cleveland, Ohio, 884 shares of 7% preferred stock of the Ohio Rubber Company, which was then paying an annual dividend of \$6,188.00. The trustee was to receive \$188.00 annually for its expenses and commissions. The Union Trust Company was later named successor trustee, and is now in liquidation by S. H. Squire, Superintendent of Banks for the State of Ohio, one of the respondents.

Anne Lamson Hallock was divorced on October 28, 1919. She is still living and has not remarried. The trust agreement contained the following provision for termination and disposition of its corpus:

"C. If and when Anne Lamson Hallock shall die, then and in such event and thereupon the within trust shall terminate and said Trustee shall and will pay Party of the First Part if he then be living any accrued income then remaining in said trust fund and shall and will deliver forthwith to Party of the First Part, the principal of the said trust fund. If and in the event said Party of the First Part shall not be living then and in such event payment and delivery over shall be made to Levitt Hallock and Helen Hallock, respectively, son and daughter of the Party of the First Part, share and share alike. If and in the event either said Levitt Hallock or Helen Hallock shall at such time be dead, the share which would have gone to him or her if living, shall go to the children of such deceased child and if there be no such children living, then said entire income and principal shall be paid to that child of Henry Hallock then living.

"D. Party of the First Part reserves to himself, his heirs, executors, administrators, and assigns the right at his option if and in the event said Anne Lamson Hallock shall marry any other person than said Henry Hallock to pay to said Trustee on or within six months after said marriage the sum of Twenty Thousand Dollars (\$20,000.00) and deliver over to said Trustee evidence that said Anne Lamson Hallock has so remarried. Upon receipt of said fund and said proof by Trustee, if and in the event said proof is satisfactory to Trustee, then and in such event Trustee shall deliver the said fund of Twenty Thousand Dollars (\$20,000.00) to said Anne Lamson Hallock. This trust shall terminate and the disposition of the then accrued income and trust fund shall be made pursuant to Paragraph C above.

"This trust may be terminated, modified, altered, canceled, or in any way varied by the written consent of the Party of the First Part and beneficiary."

The Commissioner included in decedent's gross estate the stock of the Ohio Rubber Company in the trust and valued it at date of death at \$70,720.00 and found a deficiency in tax of \$6,096.97. On the basis of this valuation and the age of Anne-Lamson Hallock at the

date of decedent's death, he found the fair value of the life estate or her interest in the trust estate to be \$25,743.00.

In the return, deductions of \$171,378.17 were claimed and the estate was appraised in the Probate Court of Cuyahoga County, at \$114,822.36. The Commissioner reduced deductions \$56,555.81, the excess over the valuation of the estate in Probate Court. The gross taxable estate determined by the Commissioner included a life insurance trust created by testator, as well as the trust involved in these proceedings. As thus valued, the gross estate exceeds the total claimed deductions.

On September 1, 1925, the decedent transferred to the respondents, Mary Q. Hallock and Central United National Bank of Cleveland, as trustees under an agreement of trust, insurance policies on his life having an aggregate face value of approximately \$200,000.00. At the time of decedent's death, the net value of this trust was about \$110,000.00 and its proceeds or their investment in the hands of the trustees at the time the Commissioner determined his deficiency exceeded the amount thereof.

The corpus of the insurance trust passed under contracts executed by the decedent in favor of specific beneficiaries, who are respondents in No. 7666.

The Board of Tax Appeals disallowed the deficiency of the Commissioner as determined on the foregoing facts, hence these proceedings for review.

The petitioner insists that the death of the testator was the generating source of new rights to his children under the trust instrument, because until his death there was no assurance they would at any time come into possession or enjoyment of any portion of the trust estate.

The applicable statute is Section 302 (c) of the Revenue Act of 1926, 44 Stat. 9, 70, 26 U. S. C. A. 411 (c), which provides for the inclusion in a taxable estate of a decedent's property transferred "in contemplation of or intended to take effect in possession or enjoyment at or after his death."

The statute intended to levy a tax on property possessed or enjoyed by the decedent in his lifetime having a clear value in money. It does not cover a mere technical interest without regard to a present right to possess or enjoy or without measurable value at date of death.

In the case of *Helvering v. St. Louis Union Trust Company*, 296 U. S. 39, 47, the trust indenture provided that, "if the daughter (the beneficiary) predecease the grantor, the trust shall terminate and the trust estate be transferred, paid over, and delivered to the grantor, to be his absolutely." With reference to the interest of the grantor it was said: "His death passed no interest to any of the beneficiaries of the trust; and enlarged none beyond what was conveyed by the indenture. His death simply put an end to what, at best, was a mere possibility of a reverter by extinguishing it; that is to say, by converting what was merely possible into an utter im-

possibility." The court further added: "But here the grantor parted with the title and all beneficial interest in the property, retaining no right with respect to it which would pass to any one as a result of his death."

In the case of *Becker v. St. Louis Union Trust Company*, 296 U. S. 48, 53, the decedent had executed separate declarations of trust in favor of each of his four children. These declarations provided that if the beneficiary should die before the death of the trustor " * * * then this trust estate shall thereupon revert to me and become mine immediately and absolutely, or (b) if I should die before her death, then this property shall thereupon become hers immediately and absolutely and be turned over to her and in either case this trust shall cease." The court said: "The question, therefore, is whether the mere possibility of a reverter stamps the transfer as one intended to take effect in possession or enjoyment at or after the death of the grantor. The decision just rendered (*Helvering v. St. Louis Union Trust Company*) answer this question in the negative."

The rights of the beneficiaries and distributees under the trust here in question were fixed by its terms and the rights passed from the trustor at the time of the execution of the trust instrument and, while the death of the trustor definitely fixed the right of his children in the trust estate, it was not the generating source of their rights. *Fait v. Safe Deposit & Trust Company of Baltimore*, 74 Fed. (2d) 351 (4 C. C. A.); *Commissioner v. Grosse*, 100 Fed. (2d) 37 (9 C. C. A.).

The petitioner leans heavily on *Klein v. United States*, 283 U. S. 231, 235, in which case a life estate in land was conveyed to the grantee by deed and provided that upon her death prior to the death of the grantor, the reversion should "remain vested in grantor * * * said reversion being hereby reserved to said grantor and excepted from this conveyance," but if the grantee should survive the grantor he should have the land in fee simple. This case is easily distinguished from the one at bar. There the effect of the deed was to vest only a life estate in the grantee, the remainder being retained by the grantor so that his death effected a transmission of the larger estate to the grantee.

The trust instrument here under consideration contained a condition subsequent. The right of reverter in the grantor was based on the possibility only that he might predecease his wife in which event the title would return to him. He had conveyed his whole interest in the estate and had nothing left except a mere possibility of reverter, too intangible for measurement in money, and over which he had no control.

The second issue for consideration is whether the statute permits a deduction from the gross estate, as defined by the Revenue Law, of unpaid claims which cannot be paid because they exceed the value of the estate as determined in the jurisdiction of administration. In

the case here the Commissioner has included in the gross estate, proceeds of certain insurance policies on the life of decedent, not subject to the payment of his debts under local law.

Section 301 (a), Revenue Act of 1926, 26 U. S. C. A., Section 410, provides "a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in Section 303 (26 U. S. C. A., Sections 411 and 412)) shall be imposed upon the transfer of the net estate of every decedent." Section 303, as amended, 47 Stat. 280 (26 U. S. C. A. 412), provides in part "for the purpose of the tax the value of the net estate shall be determined * * * (a) in the case of a resident by deducting from the value of the gross estate; such amounts (1) for funeral expenses, (2) for administration expenses, (3) for claims against the estate * * * as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered. * * * The deductions herein allowed in the case of claims against the estate * * * shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate or full consideration in money or money's worth." The statute contains neither patent nor latent ambiguities, and means the same whether read as an excerpt isolated from its context or in *pari materia*. It is too plain in language to need the aid of contemporaneous administrative construction. *Houghton v. Payne*, 194 U. S. 88, 104.

The application of the estate tax law presents a simple mathematical calculation to reach its end. On one side is valued certain assets specifically enumerated in the statute; on the other, certain statutory defined deductions. The last subtracted from the first constitutes the net estate which is taxed at given percentages. The elements of both sets of factors are specifically enumerated in the Act and to some extent items going into the gross estate as well as deductions have been arbitrarily chosen by the Congress. The inclusion of insurance in the gross estate is by legislative fiat. The proceeds of such policies are not the property of the deceased and the right to them accrued to individuals named in the policy which right the decedent never possessed. The inclusion by Congress of this class of property as a part of the gross estate of decedent finds its justification in the fact that the income of the decedent paid for the insurance. The taxation of unearned benefits accruing on death is a proper source to which the Government may turn in its need. As a corollary to inclusion of insurance in gross estates, the Congress may have been impelled as a matter of abstract justice to allow the individual beneficiary who is called on to pay the tax to take deductions which may not be basically logical. The fact that the estate may not be called upon to pay the debt is no concern of the courts. The insurance beneficiaries can be called upon to pay the estate tax due the Government if the estate be insolvent. There is no element

of unfairness in allowing debts defined in the statute to be deducted in determining the net estate.

The Commissioner contends in effect that Section 303 (a) should have read into it a proviso limiting the deductions to claims which are actually possible to payment from the assets of the estate. This would make the section in substance provide that only deductions should be permitted for claims against the estate which constitute legally enforceable demands and which are actually payable from its assets.

To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. The responsibility for the justice or wisdom of legislation rests with the Congress. It is the province of the courts to construe, not to make laws. *United States v. Detroit First National Bank*, 234 U. S. 245, 262.

The Congress by a simple phrase could have limited deductions from gross estates by excluding such portions as passed unburdened of claims under the laws of the state of domicile. It did not elect to do so, therefore all claims allowable against it by the laws of the jurisdiction where being administered are deductible in determining the net estate. *Commissioner v. Windrow*, 89 Fed. (2d) 69 (5 C. C. A.); *Commissioner v. Ames*, 88 Fed. (2d) 338 (5 C. C. A.).

The order of the Board is affirmed.

United States Circuit Court of Appeals for the Sixth Circuit

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the cases of *Commissioner of Internal Revenue vs. Mary Q. Hallock et al.*, No. 7666; *Commissioner of Internal Revenue vs. Mary Q. Hallock, Executrix*, No. 7667; and *Commissioner of Internal Revenue vs. S. H. Squire, Superintendent of Banks etc.*, No. 7668, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 14th day of June, A. D. 1939.

[SEAL]

J. W. MENZIES,
*Clerk of the United States Circuit Court
of Appeals for the Sixth Circuit.*

Supreme Court of the United States

No. 110. October Term, 1939.

Order allowing certiorari

Filed October 9, 1939.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

Supreme Court of the United States

No. 111. October Term, 1939

Order allowing certiorari

Filed October 9, 1939.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

Supreme Court of the United States

No. 112. October Term, 1939

Order allowing certiorari

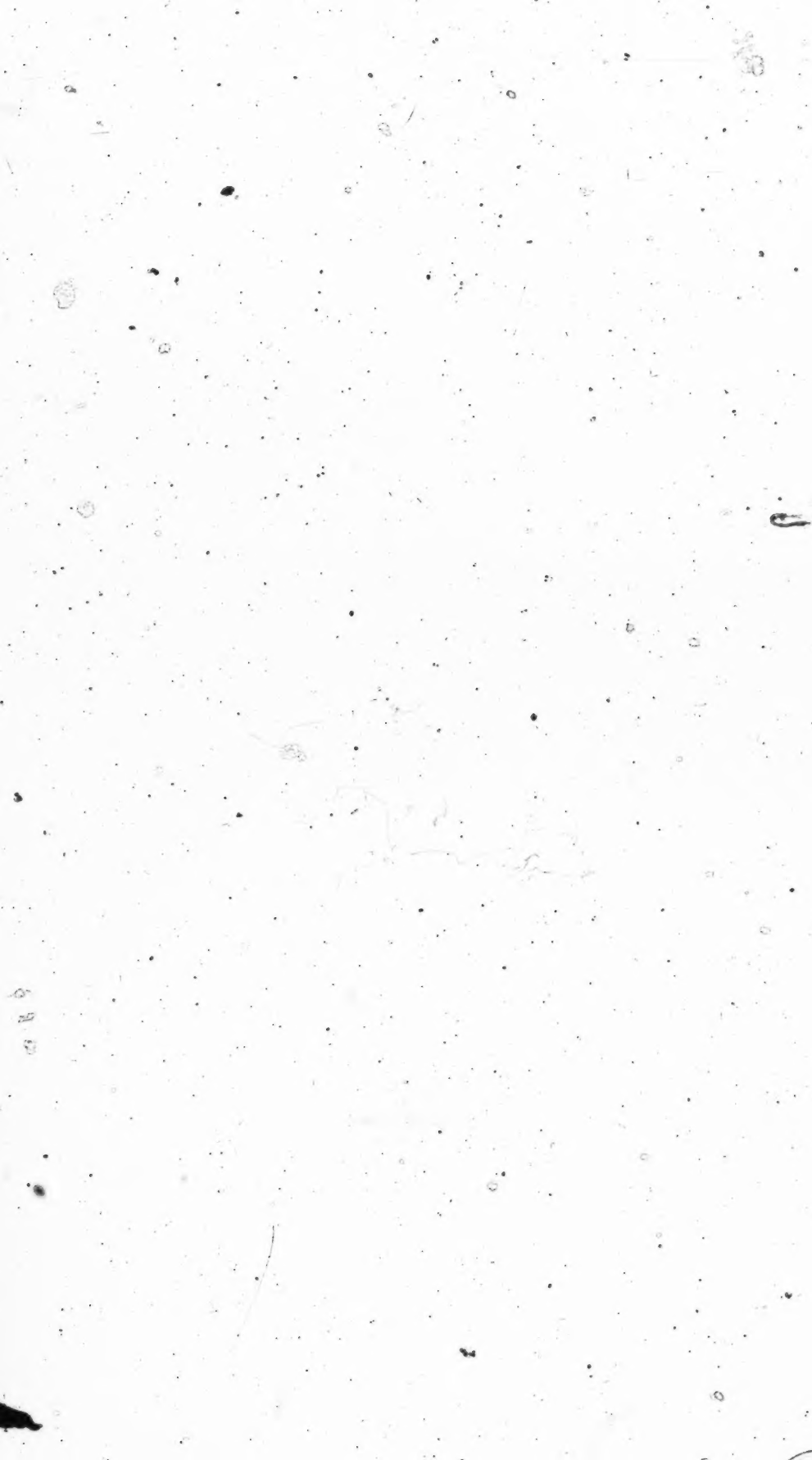
Filed October 9, 1939.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

[Endorsement on cover:] File Nos. 43,517, 43,518, 43,519. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 110. Guy T. Helvering, Commissioner of Internal Revenue, Petitioner vs. Mary Q. Hallock and Central United National Bank of Cleveland, Trustees. Term No. 111. Guy T. Helvering, Commissioner of Internal Revenue, Petitioner vs. Mary Q. Hallock, Executrix, Estate of Henry Hallock, Deceased. Term No. 112. Guy T. Helvering, Commissioner of Internal Revenue, Petitioner vs. S. H. Squire, Superintendent of Banks of the State of Ohio, etc. Petition for writs of certiorari and exhibit thereto. Filed June 13, 1939. Term Nos. 110 O. T. 1939, 111 O. T. 1939, 112 O. T. 1939.



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